for presentation as factual testimony and which Frontier alleged cited to various court, state Commission and FCC decisions; purported to interpret and apply them; and attempted to the define the scope of legal inquiry in this case and raise evidentiary objections to other testimony.

On January 16, 2004, the undersigned issued a Procedural Order granting the motion and application for Pro Hac Vice Admission of Michael F. Morrone, which was filed on January 9, 2004.

Also on January 16, 2004, Easterbrooke filed its opposition to Frontier's motion to strike Mr. Wood's prepared testimony. Easterbrooke argued that its witness was simply properly offering facts and opinion to refute those offered by Frontier's witness, J. Michael Swatts. Easterbrooke argued that there was no question that Mr. Wood's expertise qualified him as an expert witness and that his offering of facts and opinion was appropriate for rebuttal testimony. Easterbrooke noted that, in his direct testimony, Mr. Swatts offered a number of opinions regarding whether Easterbrooke met the requirements of offering the nine supported services and whether it was in the public interest to designate Easterbrooke as a competitive ETC. Mr. Wood's testimony simply responded to the testimony of Mr. Swatts. Easterbrooke went on to state that nowhere did Mr. Wood resort to legal argument on the state of the law in West Virginia nor did he attempt to interpret the law. Instead, he offered assessments on Easterbrooke's ability to comply with current FCC and Commission policy regarding the provision of the required services and whether or not Easterbrooke's designation meets the public interest requirement.

The hearing set for January 20, 2004, was held as scheduled, with Robert R. Rodecker, Esquire, and Michael F. Morrone, Esquire, appearing on behalf of Easterbrooke; John B. Adams, Esquire, appearing on behalf of Frontier; Patrick W. Pearlman, Esquire, appearing on behalf of the CAD; and Staff Attorney Meyishi Blair, Esquire, appearing on behalf of Commission Staff. At the commencement of the hearing, the undersigned denied Frontier's motion to strike portions of the rebuttal testimony of Easterbrooke witness Wood, stating that a review of Mr. Wood's testimony indicated that, in each instance cited, he was simply responding to statements made by Frontier witness Swatts in his prepared direct testimony. Before any witnesses were called, the parties indicated that a Joint Stipulation and Agreement for Partial Settlement had been entered into by them with respect to several of the issues which normally would be addressed in the case. The Joint Stipulation and Agreement for Partial Settlement was received into evidence as Joint Exhibit No. 1. Easterbrooke presented the testimony of two witnesses and introduced three exhibits into evidence; Frontier presented the testimony of one witness and introduced two exhibits into evidence; and the CAD presented the testimony of one witness and introduced three exhibits into evidence. Frontier attempted to introduce a third exhibit into evidence, but it was stricken from the record. At the conclusion of hearing on January 20, 2004, this matter was submitted for a decision. A second day of hearing was not necessary.

The transcript of the hearing in this matter was filed on February 4, 2004, and consists of 151 pages of testimony and argument.

Easterbrooke, Frontier and the CAD filed Initial Briefs and/or Proposed Findings of Fact and Conclusions of Law, and those three parties also filed Reply Briefs. Commission Staff did not file an initial or reply brief in this matter.

On February 24, 2004, Frontier filed a letter regarding the exchange of traffic between Frontier and Easterbrooke, as a result of certain testimony and questioning during the hearing held on January 20, 2004.

## EVIDENCE

The first exhibit introduced into evidence in this proceeding was the Joint Stipulation and Agreement for Partial Settlement executed by and between Easterbrooke, Commission Staff, the CAD and Frontier. Joint Exhibit 1 represents a settlement among the parties regarding some of the issues raised in Easterbrooke's petition to be designated as an ETC in that part of Frontier's service area for which Easterbrooke is licensed by the FCC to provide commercial mobile radio service (CMRS). In Joint Exhibit 1, the parties agreed and recommended that, if the Commission enters an order designating Easterbrooke as an ETC in certain portions of Frontier's service territory, certain conditions should apply and certain procedures should be followed. However, by entering into the Joint Stipulation, the parties did not waive their rights to take any position they deem appropriate on the threshold issues of whether designating Easterbrooke as an ETC is in the public interest and whether Easterbrooke provides access to the public switched network.

In sum, the parties agreed that Easterbrooke is a common carrier; that Easterbrooke, throughout its CMRS licensed area, offers and advertises, using media of general distribution, the following services: (1) local usage; (2) dual tone multi-frequency (DTMF) signaling or its functional equivalent; (3) single party service or its functional equivalent; (4) access to emergency services; (5) access to operator services; (6) access to interexchange services; (7) access to directory assistance; and (8) toll limitation for qualifying low-income consumers. The Stipulation further acknowledges that Easterbrooke does not offer or advertise the services listed above outside of its CMRS licensed area and that Easterbrooke agrees that it will offer Lifeline and Link-Up services (known as Tel-Assistance services in West Virginia) throughout its designated service area upon being designated as an ETC.

Easterbrooke further agreed that it will abide by the following conditions as long as it retains its ETC designation in West Virginia:

> A. As an ETC, Easterbrooke will be obliged to provide service to existing or potential customers upon reasonable request. Such requests may come from consumers who reside within Easterbrooke's CMRS license area, but are unable to receive an adequate signal. In response to such requests, Easterbrooke will take the following steps:
>
> > 1. If a request comes from a party within its existing network, Easterbrooke will make commer-

cially reasonable efforts to provide service as soon as possible;

2. If a request comes from a party residing in an area that lies within Easterbrooke's CMRS license area, but which is not receiving service from Easterbrooke's authorized facilities, Easterbrooke will take a series of steps to provision service, namely:

> First, it will determine whether the requesting party's equipment can be modified or replaced to provide acceptable service in a cost-effective manner;
>
> Second, it will determine whether a roof-mounted antenna or other network equipment can be deployed in a cost-effective manner at the requesting party's premises to provide service;
>
> Third, it will determine whether reasonable adjustments at the nearest cell site can be made to provide service;
>
> Fourth, it will determine whether a cell extender or repeater can be employed in a cost-effective manner to provide service;
>
> Fifth, it will determine whether there are any other reasonable adjustments to the network or customer facilities which can be made to provide service;
>
> Sixth, Easterbrooke will explore the possibility of offering the resold services of carriers that have facilities available to that location; and
>
> Seventh, Easterbrooke will determine whether an additional cell site can be constructed to provide service, and evaluate the costs and benefits of using scarce high-cost support to serve the number of persons or parties requesting service through such additional cell site. If there is no possibility of providing service short of constructing a new cell site, Easterbrooke will report this fact to the Commission, for informational purposes, along with the projected costs of construction and Easterbrooke's determination as to whether the request for service is reasonable and whether high-

cost funds should be expended on the request.

B. Easterbrooke agrees to periodically identify for the Staff and CAD unserved areas within its ETC designated service areas and to inform the Staff and CAD of its plans for the deployment of wireless facilities in its service territory.

C. Easterbrooke agrees to file with the Commission copies of its terms and conditions of service, and to provide the Commission, on an informational basis, a copy of its rate plans, including its Tel-Assistance, Link-Up and Lifeline discounts available to qualifying low-income customers; and

D. Easterbrooke agrees to file annually with the Commission information as required by the Commission in order to certify compliance with 47 U.S.C. §254(e). Such information shall include the amount of federal universal service funding received by Easterbrooke during the previous year and a statement of how such funds were spent or invested in compliance with 47 U.S.C. §254(e).

The parties reached no agreement regarding whether Easterbrooke offered access to the public telephone network or whether designating Easterbrooke as an ETC in Frontier's service area is in the public interest. Finally, except for the extent to which the parties have agreed to a different condition in the Stipulation, the parties agreed that they will be bound by the final, non-reviewable decision in Highland Cellular, Inc., Case No. 02-01453-T-PC, with respect to the following issues:

A. Whether Easterbrooke will be required to comply with the conditions that Frontier has proposed to apply to Easterbrooke. Those conditions, which are the same as Frontier proposed in Highland Cellular, Inc., are:

1. provide equal access;

2. comply with the Winfield Plan;

3. comply with the Rules and Regulations for the Government of Telephone Utilities, including those rules from which wireless carriers are otherwise exempt, especially those in Section 2 of the Rules;

4. file informational tariffs, and post them on its web site;

5. reduce rates by the amount of per-line USF monies received, or in the alter-

native, use all USF monies received for incremental capital investment, or a combination of the two;

6. submit to annual Commission review of how USF receipts were used, including a review of infrastructure development plans;

7. take all necessary steps to provide service to all consumers who make reasonable requests by modifying or building out the wireless network or by providing service using wireline or other technologies, including through resale and the use of unbundled network elements, as necessary; and

8. the designation exists only as long as ILECs' universal service receipts are not reduced when an additional ETC is designated in their study areas.

B. Whether Easterbrooke's designated service area lawfully may be less than the entirety of each Frontier study area in which it is designated as an ETC. More specifically:

1. If the final, non-reviewable decision in Highland Cellular, Inc., provides that Highland must serve whole Frontier study areas, then Easterbrooke must serve the entirety of each Frontier study area in which it is designated as an ETC; and

2. If the final, non-reviewable decision in Highland Cellular, Inc., provides that Highland is not required to serve whole Frontier study areas, then Easterbrooke will not be required to serve the entirety of each Frontier study area in which it is designated as an ETC. In such case, Easterbrooke may be designated to serve an area to be determined by the Commission, subject to concurrence by the FCC pursuant to 47 C.F.R. §54.207(b) and (c).

Finally, the Joint Stipulation and Agreement for Partial Settlement provided that any designation of Easterbrooke as an ETC in Frontier's service area will become effective following both the issuance of a final, non-reviewable decision in the Highland Cellular case and the issuance, if necessary, under 47 U.S.C. §214(e)(5) and 47 C.F.R. §54.207(c) of an FCC order concurring in the Commission's proposed designated service area for Easterbrooke.

The first witness to present testimony was Tim McGaw, Vice President of Easterbrooke and President of Douglas Telecommunications, Inc. (DTI). Mr. McGaw has been associated with Easterbrooke since 1999. He has been

President of DTI since its inception in 1995. He also served as Executive Vice President of Rural Cellular Management Company from 1991 to 1995, which was a predecessor in interest to DTI. (Easterbrooke Exhibit 1, p. 2). According to Mr. McGaw, DTI employees manage the conduct of Easterbrooke's cellular radio system operations and network in West Virginia. The majority of the DTI employees live and work in West Virginia Rural Service Area 5 (WV RSA 5), the designation of the specified service territory for which the FCC granted Easterbrooke a cellular license. (Easterbrooke Exhibit 1, p. 2). Easterbrooke was established in 1990 and is an authorized wireless cellular carrier operating in West Virginia. It is also a telecommunications carrier as defined by the Communications Act of 1934, as amended. Easterbrooke provides service through its interconnection agreement with Verizon West Virginia Inc. which has been approved by the Public Service Commission. Easterbrooke is the original FCC licensee of WV RSA 5, designated by the FCC as Market No. 705, and encompassing Braxton, Clay, Nicholas, Pocahontas, Randolph, Tucker, Upshur and Webster Counties. Easterbrooke's cellular radio transmitters are licensed to operate under Call Sign KNKN739. As of December 2003, Easterbrooke had constructed 38 cell sites and will continue to add more sites as business conditions warrant. All of Easterbrooke's cell sites are connected by T-1 lines and microwave links to Easterbrooke's switch in Elkins, West Virginia, which in turn is connected to the public switched telephone network (PSTN), pursuant to Easterbrooke's interconnection agreement with Verizon. (Easterbrooke Exhibit 1, p. 3).

According to Mr. McGaw, Easterbrooke's network utilizes Nortel Time Division Multiple Access (TDMA) 850 MHz technology, with digital and anilog channels being supported. Easterbrooke is continuing to upgrade its switch to offer customers the latest telecommunications features. Its switch is designed to support network expansion and easily accommodates additional cell sites. Easterbrooke plans to further expand its coverage and service offers to out of its licensed service area. In 2004, Easterbrooke intends to install and activate a Global System for Mobile Communications (GSM) technology switch in Summersville, West Virginia, which will bring enhanced capabilities, including high-speed data offerings, to WV RSA 5. (Easterbrooke Exhibit 1, p. 3).

As Mr. McGaw explained, the eight-county area which makes up WV RSA 5 features some of the most mountainous and topographically diverse terrain in the entire state. Major primary and second highways in RSA 5 include Interstate 79 and Highways 19, 219 and 33. He explained that the economy in this market area is driven by recreation, logging, coal, tourism, service and light industrial occupations. He further explained that the topography, the relatively modest income levels and significant poverty in that geography region all pose challenges to Easterbrooke's efforts to satisfy its coverage and service objectives. (Easterbrooke Exhibit 1, p. 3). Easterbrooke has already been designated as an ETC by the Public Service Commission for wire centers served by Verizon which lie within Easterbrooke's service territory. Easterbrooke is now requesting ETC status for its remaining authorized service territory, which is served by Frontier, a rural telephone company (RTC). Exhibit A attached to Mr. McGaw's testimony indicates the boundary of WV RSA 5 and the area for the proposed ETC designation.

Mr. McGaw explained that Easterbrooke is seeking ETC status to enhance its network through the operation of additional cell sites, to provide customers with advanced services and the highest quality of service and to provide competitive telecommunications services in rural West Virginia. Easterbrooke believes that, with USF funding, it will be able to greatly improve its service in rural or remote areas and reduce or eliminate "dead spots" in its current communications coverage, which occur due to terrain or propagation characteristics, by constructing new cells and installing repeaters and extenders, as well as incorporating emerging or innovative technologies. Mr. McGaw noted that Easterbrooke and its customers currently pay into the Universal Service Fund and Easterbrooke's customers deserve to take advantage of the benefits that USF support provides. The incumbent local exchange carriers (ILECs) and their customers have already begun to experience the benefits of high-cost support and he believes that Easterbrooke deserves similar support so that it may bring competitive wireless services to areas not currently served by a wireless carrier or to areas where landline service is unavailable. (Easterbrooke Exhibit 1, pp. 4-5).

According to Mr. McGaw, Easterbrooke provides coverage within its licensed service area consistent with applicable ETC requirements. Easterbrooke is the Frequency Block A cellular licensee for WV RSA 5. The eight counties within the RSA encompass 4,814 square miles, or nearly 20% of the entire state. Easterbrooke engineers its system for hand-held coverage, -85 dBmW or better. Nevertheless, subscriber proximity and handset wattage will impact service quality. Easterbrooke is seeking USF funding to continue to expand and improve its network through the establishment of additional cell sites. A map showing the areas where Easterbrooke is currently providing coverage with the signal strength of -85 dBmW or better was attached to Mr. McGaw's testimony as Exhibit B. (Easterbrooke Exhibit 1, p. 5 and Exhibit B).

In attempting to expand its coverage in WV RSA 5, Easterbrooke has to address certain engineering and financial challenges proposed by the existence of the National Radio Quite Zone (Quite Zone), established by the FCC in 1958 and which is centered around Green Bank, West Virginia. The Quite Zone encompasses an area of approximately 13,000 square miles in Virginia and West Virginia. The purpose of the Quite Zone is to minimize possible harmful interference with the National Radio Astronomy Observatory, located at Green Bank, West Virginia, and the Naval Radio Research Observatory, located at Sugar Grove, West Virginia. (Easterbrooke Exhibit 1, pp. 5-6).

FCC rules require that the National Radio Astronomy Observatory be informed of any proposed construction and the operation of new or modified radio transmission sites in the Quite Zone. Quite Zone restrictions generally result in reduced "effective radiated power" for sites that are approved for transmission. Restrictions also impact location and antenna configurations, because some sites are nearly unbuildable. The net result for CMRS carriers affected by the Quite Zone is to significantly increase coverage costs beyond what they otherwise would be and to significantly reduce signal strength, resulting in reduced service capabilities in that area. At one time, the FCC's rules governing operations in the Quite Zone prevented Easterbrooke from offering service to approximately 67% of its RSA. In an effort to cover as much of its licensed area as possible, Easterbrooke, in concert with United States Cellular Corporation, filed a petition for rulemaking with the FCC on May 4, 1995. The FCC denied the petition on February 9, 2000, but, instead, granted both Easterbrooke and United States Cellular Corporation a waiver of certain FCC network build-out requirements. The waiver enabled Easterbrooke to construct facilities within the Quite Zone beyond the expiration of the five-year build-out period and afforded it time to address the unique engineering and financial challenges that the Quite Zone poses. Easterbrooke was not obligated to take measures to expand construction within the Quite Zone, but it nonetheless petitioned the FCC to do so, to insure that it could satisfy customer demand for service in that area. (Easterbrooke Exhibit 1, pp. 6-7).

Mr. McGaw explained that Easterbrooke intends to use its USF support for the provision, maintenance and upgrade of its facilities and services pursuant to Section 254(e) of the Communications Act of 1934, as amended.[1] With USF support, Easterbrooke will be able to construct new facilities in rural high-cost areas and improve service in those areas in West Virginia where signal strength is weak due to topography. An improved telecommunications infrastructure will facilitate commercial and residential development in sparsely populated areas and spur economic development. It will also promote more efficient operations and, eventually, lower the amount of high-cost support that carriers receive, which, in turn, will preserve the USF mechanism. (Easterbrooke Exhibit 1, p. 7). Mr. McGaw stated that Easterbrooke also will use USF support to extend emergency services (911 and E911) to remote areas, thus promoting public health and safety. Easterbrooke's system is designed to link 911 calls from the cell site where they originate to a public safety answering point (PSAP), from which point the PSAP will handle the call. Easterbrooke is compliant with Phase I E911 requirements and is poised to meet its Phase I obligations. Easterbrooke is also prepared to meet Phase II E911 requirements. According to Mr. McGaw, where this service is available, consumers that are stranded on local highways can access emergency services on a wireless phone, an option that local exchange carriers cannot provide, and can take advantage of roaming features when traveling. With USF funding, Easterbrooke can provide customers with adequate signal strength during emergencies. (Easterbrooke Exhibit 1, pp. 7-8).

Mr. McGaw explained that Easterbrooke can and does offer the nine services that are supported by the Federal Universal Service Mechanism under Section 254(c) of the Act and it will advertise the availability of those services using media of general distribution, in accordance with Section 214(e)(1) of the Act. According to Mr. McGaw, Easterbrooke provides voice grade access to the PSTN through its existing T-1 facilities connected to Verizon; provides local usage through its existing T-1 facilities connected to Verizon; offers dual tone multi-frequency signaling through its Nortel DMS-100 switch; is able to provide a single-party service functional equivalent through the use of its licensed wireless spectrum; provides access to local emergency services

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[1]The sections of the amended Communications Act of 1934 at issue in this proceeding were all part of the Telecommunications Act of 1996 (TA-96). Different witnesses refer to the 1934 Act or TA-96 as the Act.

through its existing facilities; provides access to operator services through its interconnection agreement with Verizon; provides access to interexchange services through its agreement with Qwest; routes calls to directory assistance through its interconnection agreement with Verizon; and provides toll-limitation services for qualifying low-income customers. Additionally, Easterbrooke plans to provide Lifeline and Link-Up services to eligible low-income subscribers. Easterbrooke intends to offer a Lifeline rate plan that will provide a "bucket" of local (8-county) minutes for a low monthly access rate. Subscribers will be able to call anywhere in the West Virginia 304 area code and make calls outside of that area, which would reduce the permissible "bucket of minutes" at its specified rate per minute. Subscribers could also elect to restrict toll calls. Easterbrooke's Link-Up rate plan will offer a price reduction of 50% of the normal activation fee (generally $25.00) to eligible subscribers. Eligible subscribers must meet Lifeline eligibility requirements and the Link-Up reduction will apply to only one line per subscriber. (Easterbrooke Exhibit 1, pp. 8-9).

Mr. McGaw explained that Easterbrooke offers a variety of services and rate plans. It services offers include call waiting, call forwarding, three-way conference calling, detailed billing and voice mail. Easterbrooke currently has more than 100 different rate plans in effect, but it is constantly updating its offerings to reflect new promotions. Mr. McGaw identified and described four general categories of plans that have been available to Easterbrooke customers for the past eighteen months and are currently subscribed to by the majority of its customers. The Home Advantage Plan Category incorporates seven plans. The lowest-priced plan, available for $19.95 per month, provides 200 anytime minutes and 500 night and weekend minutes per month and allows for one companion line. The highest-priced plan, available for $139.95 per month, provides 2750 anytime minutes and 4,000 night and weekend minutes and allows for two companion lines. The home calling area for this category includes the eight counties in central West Virginia which make up WV RSA 5. Calls placed within the home area to anywhere in West Virginia incur no additional toll or long distance charges. Off-network roaming charges of $0.25 to $0.40 per call in West Virginia and $0.90 per call outside of West Virginia (plus toll charges) are also applicable. (Easterbrooke Exhibit 1, p. 9).

The StatePlus Plan Category includes 4 plans. The lowest-priced plan cost $29.95 per month and offers 300 anytime minutes, 1000 home weekend minutes for the main line and 400 home weekend minutes for a companion line, with a maximum of one companion line. The highest-priced plan costs $79.95 per month and offers 700 anytime minutes, 4000 home weekend minutes for the main line and 500 home weekend minutes for companion lines, with a maximum of two companion lines. The calling area includes all of West Virginia plus nine counties in Ohio, Kentucky and Maryland. A customer can originate or terminate a call in these areas without incurring toll charges. Off-network roaming charges of $0.60 per call (plus toll charges) apply. The Digital Freedom Category includes five plans ranging in price and minutes from $25.00 for 100 anytime minutes per month to $90.00 for 1000 anytime minutes per month with different maximum numbers of companion lines. The calling area includes twenty-six states east of the Mississippi River plus Washington D.C. and the customer can originate or terminate a call anywhere in the United

States without incurring toll charges. Off-network roaming charges of $0.60 per call apply. Finally, the Digital U.S.A. Category offers five plans ranging from $28.00 for 100 anytime minute per month to $128.00 for 1000 anytime minutes per month, again with varying numbers of companion lines. A customer can originate or terminate a call under these plans anywhere in the United States without incurring roaming or long distance charges. (Easterbrooke Exhibit 1, pp. 9-10).

According to Mr. McGaw, Easterbrooke is one of only a few independent cellular operators remaining in the United States. Easterbrooke's focus is solely WV RSA 5. It offers local services and calling plans that are tailored to local needs, which distinguishes it from national and regional carriers. Unlike ILECs, Easterbrooke can offer a large home calling area, even under its lowest-priced plan. Mr. McGaw believes that Easterbrooke's calling plans and service offerings can provide a viable alternative or adjunct to local exchange service. Additionally, Easterbrooke can offer quality and affordable services to consumers in areas where landline service is unavailable. (Easterbrooke Exhibit 1, p. 11).

Mr. McGaw believes that designating Easterbrooke as an ETC in the Frontier wire centers is in the public interest. The entry of a new provider of telecommunications services into the market currently dominated by an ILEC, such as Frontier, will motivate both the wireless and the wireline entities in that geographic region to work toward continued improvement and enhancement of their service offerings and lower prices, all of which will benefit consumers. The designation of Easterbrooke as an ETC in the portions of Frontier's study area which are co-terminous with Easterbrooke's RSA will not cause any reduction in the USF support that Frontier currently receives. Instead, it will simply encourage the introduction of improved service and pricing options by both companies, which also will benefit the public interest. Mr. McGaw believes that an ETC designation for Easterbrooke would enhance the value of the entire telephone network in West Virginia. (Easterbrooke Exhibit 1, p. 11).

Mr. McGaw also explained that, with USF support, Easterbrooke could provide consumers with a viable alternative to local exchange service. Customers would have the option of choosing wireless service as their primary means of communication and could select a rate plan and services that best meet their needs. Consumers will also benefit from improved technologies and longer battery life. Mr. McGaw believes that the availability of affordable high-quality wireless service is especially important to promote health and safety in rural areas where wireline services is physically unavailable. Mr. McGaw testified that Easterbrooke is committed to expanding its coverage and providing the best possible service for its customers, which he believes is demonstrated by Easterbrooke's attempts to amend the FCC's cellular build-out and unserved area rules to facilitate construction in the Quite Zone, although there was no federal requirement that it do so. USF funding will allow Easterbrooke to build a more robust network that will provide consumers with more reliable and comprehensive service. (Easterbrooke Exhibit 1, p. 12).

Mr. McGaw also discussed Easterbrooke's reliability. According to Mr. McGaw, the call completion rate for consecutive Fridays over an eight-week period in October and November 2003 was 98.58%, or a 1.42% blocking rate. Easterbrooke's performance was well within the industry's standards for call blocking. In the event of a major electrical outage, all of Easterbrooke's cell sites are equipped with battery backup which can provide eight hours of power and/or a generator that can run unattended for six days or 150 hours. Cell sites are routinely maintained and outages are rare and usually of short duration. Easterbrooke's WV RSA 5 switch has never experienced an unplanned outage and the planned down-time for periodic maintenance is rare. To the extent that outages do occur, they usually result from an external event, such as a lighting strike or wind damage, and are attended to immediately. Easterbrooke utilizes an alarm monitoring system that pages the on-duty technician and alerts management. Mr. McGaw testified that current and prospective customers can contact customer service toll-free during regular business hours or by dialing 611 from a wireless phone. If the customer is making the call from a wireless phone or calling from his home area, the call is free. Customers can also seek assistance by e-mail or in person by visiting retail stores in Elkins, Buckhannon or Summersville, West Virginia. Easterbrooke customers also are allowed to choose from a variety of anilog or digital handheld and transportable phones. (Easterbrooke Exhibit 1, pp. 12-13).

Mr. McGaw testified that Easterbrooke will insure that it can provide service upon request from customers, whether the request comes from customers located outside of its signal coverage area or within its coverage area who simply cannot receive an adequate signal. It intends to use its federal support to improve service for as many of its customers as possible and to provide service to as many requesting customers as possible. If a customer within Easterbrooke's existing network makes a service request, Easterbrooke will provide service immediately. If a request is generated by a customer within Easterbrooke's authorized service area who is not receiving service, Easterbrooke will initiate steps to provide service, including (1) modifying or replacing equipment; (2) deploying a roof-mounted antenna or other network equipment; (3) making adjustments to the nearest cell site; (4) employing a cell extender or repeater; (5) adjusting network or customer facilities; (6) providing resold services of other carriers that have available facilities; or (7) determining whether an additional cell site can be constructed to provide service, and evaluating the cost and benefits of using high-cost support to serve parties through that additional cell site. According to Mr. McGaw, if there is no possibility of providing service short of constructing a new cell site, Easterbrooke will submit the projected cost of construction, and its determinations as to whether the request for service is reasonable and whether high-cost funds should be expended to satisfy the request, to the Public Service Commission for review. (Easterbrooke Exhibit 1, pp. 13-14).

On cross-examination, Mr. McGaw further explained that, with Universal Service funds, Easterbrooke can build out or expand its infrastructure in order to expand the service it provides in its licensed service area. He further explained that, between 2001 and 2003, Easterbrooke has spent between 3.4 million dollars and 4.9 million dollars per year in infrastructure investment. The expenditures have tended to increased in recent years. (Tr., pp. 21-22). In 2004, Easterbrooke's capital expenditures will be the highest ever, partly associated with the addition of the GSM Switch in Summersville. Mr. McGaw has no problem with committing to use Universal Service funds as an incremental investment over and above Easterbrooke's historical capital expenditures. (Tr., p. 22). Mr. McGaw believes that Easterbrooke will probably have a need for more infrastructure investment than it has in the past. (Tr., pp. 23-24).

Currently, Easterbrooke has 39 cell towers in its service area and is working to install five (5) more in 2004. Easterbrooke wants to build as many towers as can be financed. Mr. McGaw doesn't know how many towers Easterbrooke would construct in its first year after obtaining eligible telecommunications carrier designation. (Tr., p. 24). He explained that, on average, including the cost of acquiring rights to property to put up a tower, it costs approximately $250,000 to $300,000 to actually build a cell tower. The vast majority of Easterbrooke's towers were constructed by Easterbrooke, not co-located. (Tr., pp. 24-25). In the Joint Stipulation and Agreement for Partial Settlement, Easterbrooke committed to work with Staff and the CAD to review its Universal Service Fund expenditures. (Tr., p. 25).

Mr. McGaw stated that Easterbrooke has experienced cell tower outages since 1990. However, the situation has improved significantly as Easterbrooke has improved the fundamental backbone of its network. The primary cause of outages is probably microwave failure in terms of transmitting calls back to the switch. These outages are usually suffered in winter due to weather issues. Easterbrooke only experiences a couple of outages during a year. Mr. McCaw explained that the Easterbrooke system has a great deal of redundancy and, often, outages can be repaired rapidly, within five to six hours, although some take longer. Because of topography, there are not that many areas where one cell tower can pick up and transmit signals from a tower that is out of service. The Easterbrooke system is called a "string of pearls" structure, which means that Easterbrooke's towers are set more or less in a line, as compared to an urban environment, where a company might have four or five cell sites clustered together and where it might be possible for one tower to pick up transmissions from a tower that is suffering an outage. (Tr., pp. 25-27). Mr. McGaw testified that topography has a major impact in this market in particular. (Tr., p. 27).

Mr. McGaw explained that Easterbrooke has an interconnection agreement with Verizon, but does not have an interconnection with Frontier. The interconnection point between Easterbrooke and Verizon is at two "V" tandems, one in Clarksburg and the other either in Charleston or Summersville. (Tr., pp. 27-28). The Clarksburg tandem provides interconnection with Verizon in the northern (Clarksburg) LATA while the Charleston or Summerville tandem provides interconnection with Verizon in the southern (Charleston) LATA. (Tr., p. 28). According to Mr. McCaw, Easterbrooke hasn't requested an interconnection agreement with Frontier and Frontier hasn't requested one with Easterbrooke. (Tr., p. 31).

Mr. McGaw acknowledged that a cell tower outage would affect the provision of 911 service to customers who access that cell tower. If the site is down, it's the same as if the site didn't exist. The same is true with dead spots. If a customer is mobile and making a call to 911, if the customer enters a dead spot, the customer could lose that call to 911. (Tr., p. 32). Mr. McGaw testified that Easterbrooke has never received complaints from any of its subscribers that they are unable to place calls to or receive calls from a Frontier customer using his or her Frontier landline phone. Further, Frontier hasn't complained to Easterbrooke that any Frontier customers have been unable to place calls to or receive calls from Easterbrooke customers using their Easterbrooke wireless phones. Frontier has never approached Easterbrooke to request that it enter into an interconnection agreement with Frontier. According to Mr. McGaw, there is no factor that he knows of preventing Frontier from requesting an interconnection agreement with Easterbrooke. Mr. McGaw further testified that Easterbrooke's lack of an interconnection agreement with Frontier does not preclude or impede Easterbrooke's ability to offer any of the nine supported services identified in Section 54.101 of the Federal Communications Commission's rules. (Tr., pp. 38-40). According to Mr. McGaw, a carrier like Easterbrooke could not possibly enter into an interconnection agreement with every ILEC in the country. He explained that the point of the public network is to avoid that problem. He further testified that Easterbrooke's receipt of Universal Service Fund support will permit it to construct facilities in high cost sectors of its licensed service area. (Tr., p. 40).

According to Mr. McGaw, the high cost regions covered by Easterbrooke's petition in this case are geographic regions that could be visited by persons who might live or work in the low cost centers of Easterbrooke's service areas. When people travel by car to the high cost areas they could get access from Easterbrooke to the nine Universal Service Fund supported services, even though they are not standing next to a Frontier landline telephone. Mr. McGaw believes that ETC designation for Easterbrooke is consistent with and in furtherance of the public interest, because of Easterbrooke's ability to expand its network and reach out to areas that previously had no coverage, which will then provide access to the nine supported services, plus others, to many more people. He further pointed out that landlines also suffer outages in bad weather and customers served by those landlines then cannot contact the 911 services. (Tr., pp. 40-42).

Mr. McGaw pointed out that Easterbrooke won't get a dime due to its eligible telecommunications carrier designation unless customers actually subscribe to its service. Easterbrooke does have an existing customer base, including customers in high-cost rural areas. Other carriers also may have existing customers in high-cost rural areas. The fact that Easterbrooke has an existing network and customers does not mean that it will continue to incrementally improve the network absent those Universal Service Funds. (Tr., pp. 43-44).

The next witness to present testimony in this proceeding was Don J. Wood, a principal in the firm of Wood and Wood, an economic and financial consulting firm in Georgia. Mr. Wood provides economic and regulatory analysis of the telecommunications, cable and other related industries with an emphasis on economic policy, competitive market development and cost-of-service issues. Mr. Wood has extensive experience in the telecommunications industry and has a scholastic background in finance and macroeconomics from Emery University and the College of William and Mary. He has testified extensively before regulatory commissions in thirty-six states, the District of Columbia and Puerto Rico, as well as in state and federal courts and before the Federal Communications Commission. (Easterbrooke Exhibit 2A, pages 1-2 and attached Exhibit DJW-1). Mr. Wood is very familiar with the universal service mechanism. (Easterbrooke Exhibit 2A, pages 2-3).

Mr. Wood explained that granting eligible telecommunications carrier designation to Easterbrooke will provide benefits to customers in both the short term and the long term. Customers or/and users will benefit in the short term from having a choice of suppliers representing different technologies, which will allow them to choose the technology that best meets their needs. They will also be able to select from a broader array of service and pricing plans, again choosing a plan that best meets their individual needs. Over the long term, consumers will benefit as competitive market forces make all providers, including the incumbent local exchange carriers, more efficient and responsive to customer needs. Mr. Wood explained that the Federal Communications Commission has previously concluded that the entry of an additional eligible telecommunications carrier into a rural area can provide incentive to the incumbent to implement new operating efficiencies, lower prices and provide better service to its customers and that there was no merit in arguments that the designation of an additional eligible telecommunications carrier in a rural area would reduce investment incentives, increase prices or reduce the service quality of the incumbent local exchange carriers. (Easterbrooke Exhibit 2A, p. 5).

While Mr. Wood believes that the short term benefits of competitive entry, such as lower prices, new service offerings, the availability of different technology and the ability to diversify among suppliers are important, the long term economic benefits of competition represent an equally important source of potential gain for the consumers of telecommunications services in rural areas and for rural economic development. (Easterbrooke Exhibit 2A, pp. 5-6).

Mr. Wood believes that the existence of competitive alternatives in rural areas is more important than competition in urban or suburban areas for two reasons. First, the existence of competitive options for telecommunications services, particularly the availability of wireless service, is important for rural economic development. He explained that, when making decisions regarding investment or relocation, companies consider the availability of telecommunications services in a given area. Reliable voice services, data services and wireless services with sufficient coverage all play a role in this process. In order to compete with the urban and suburban areas to attract investment and jobs, rural areas must have these service available. (Easterbrooke Exhibit 2A, pp. 6-7). Mr. Wood also explained that the availability of affordable and high quality wireless service is important in rural areas for health and safety reasons. He testified that reliable mobile communications have a level of importance for people who live and work in rural areas that people living in urban areas often fail to appreciate. The availability of the highest quality wireline service is no substitute for a mobile service with broad geographic coverage, simply because the wireline service is often physically not there when needed. In an area where fields being worked are far from the road and where wireline phones along the roadway are few and far between, the availability of wireless communications can literally save a life. (Easterbrooke Exhibit 2A, p. 7).

Mr. Wood confirmed that customers of Easterbrooke services are able to make calls to Frontier customers, explaining that the ability of the customers served by each company to make calls to the customers of the other company will not change as a result of Easterbrooke's designation as an eligible telecommunications carrier. The existing network and interconnection agreement between Easterbrooke and Verizon will continue to be in place so the customers can make these calls. (Easterbrooke Exhibit 2A, p. 8).

Mr. Wood emphasized that, with respect to the public interest issue involved in designating an additional eligible telecommunications carrier in a rural telephone company area, it is the interest of the public, the consumers of telecommunications service, that must be considered. He believes that the interests of the individual carriers or categorizes of carriers are not significant elements in the public interest determination, which he believes is consistent with the FCC's stated policy of "competitive neutrality" in the rural universal service mechanism. (Easterbrooke Exhibit 2A, p. 9).

Mr. Wood testified that he has done economic development work in rural Georgia, which faces many of the same issues that are being faced by West Virginia. He testified that wireless communications represent the kind of infrastructure that businesses look at in terms of making decisions on where to locate or construct plants. A lot of companies are looking at wireless infrastructure, and specifically looking at high speed data service capability, when they make their decisions on construction or location. Mr. Wood believes that an investment in wireless infrastructure is an investment for everyone who lives and works in these areas. (Tr., pp. 50-51). He also emphasized the health and safety benefits for these areas because of the broader coverage of wireless service versus wireline services. All of these benefits are associated with investing in infrastructure. (Tr., pp. 51-52). While he acknowledged that the benefits of access to high speed services and alternative types of services could be true for any area, in urban areas that infrastructure is largely in place. It's not really in place in rural areas. In order to make rural areas attractive, the areas have to have the wireless infrastructure in place. He noted that these areas are already attractive to a degree because of land prices and the labor force, but more is required to allow them to compete with urban and suburban areas. (Tr., pp. 61-61). He emphasized that the need for network build-out is particularly true for rural areas. The current lack of choices and options in rural high cost areas makes it that much more of a benefit to build out a network in those areas. He believes that's really what's embodied in the Telecommunications Act of 1996, when one talks about opening rural markets and insuring service availability comparable to rural areas. (Tr., p. 62).

Mr. Wood agreed that, in some areas, Easterbrooke now competes with Frontier for customers. The receipt of Universal Service Funds would put Easterbrooke on a more equal footing and provide it with more of an ability to provide a viable substitute service for more customers in more areas. For some customers, Easterbrooke can't compete now. For others, Easterbrooke will have to build out its network to be able to compete, just as it took time for Frontier to build out its own network. Where Easterbrooke has built its network out and has signal coverage, Easterbrooke is in competition with Frontier to provide local service to the customers in the area. If Easterbrooke obtains eligible telecommunications carrier designation, it will be in competition with Frontier to even a greater degree. (Tr., pp. 80-81).

The next witness to present direct testimony was J. Michael Swatts, the State Government of Affairs Directors for seven of Frontier's southeastern states, including West Virginia. Mr. Swatts has had an extensive telecommunications career, beginning with GTE and then, following Frontier's acquisition of the GTE properties in 1994, with Frontier. (Frontier Exhibit 2, pp. 2-3). Frontier is a local exchange carrier providing service to customers in thirty-four (34) of West Virginia's fifty-five (55) counties. It has three designated study areas, Bluefield, St. Mary's and Mountain State. Frontier is a rural telephone company or RTC in each of those study areas and has filed a Universal Service Fund disaggregation plan for each study area. Exhibit 3 attached to Frontier Exhibit 2 is a table prepared by Mr. Swatts showing the exchanges and counties included within each of the study areas, along with the cost zone of each exchange under the disaggregations plans. Frontier is the incumbent local exchange carrier and carrier of last resort in its three study areas and it has been designated as a eligible telecommunications carrier and receives Universal Service Funds in all three of its study areas. (Frontier Exhibit 2, pp. 4-5).

According to Mr. Swatts, Frontier exceeds the requirements for providing the nine services supported by the Federal Universal Service Fund throughout its three study areas. For example, Frontier provides equal access instead of just the required access to an interexchange carrier. This allows customers to select the long distance carrier they wish to use. Frontier also provides several calling plans, including unlimited local calling for a flat monthly fee within calling scopes defined in accordance with the Commission's long-standing Winfield plan. Frontier also exceeds the requirement to provide some form of toll limitation by offering several options. Customers can choose to block all direct-dialed toll calls or to selectively block other types of toll calls, such as 900 or 976 numbers. Frontier, also offers call screening services, which allow customers to regulate toll charges by blocking incoming collect calls and by preventing third-party billed calls from being charged to their account. Frontier also offers soft dial tone to customers during temporary disconnect periods so they will have access to 911 emergency services. All of Frontier's local exchange services are regulated by the Commission. (Frontier Exhibit 2, pp. 5-6).

Mr. Swatts explained that the Public Service Commission regulates Frontier in a number of ways, including regulating Frontier's rates through an incentive regulation plan (IRP) for Frontier. In each IRP, the Commission adjusts Frontier's rates and requires it to make certain types and amounts of investment in infrastructure. The Commission sometimes requires Frontier to extend existing services or provide new services that Frontier would not otherwise be required to provide, as a condition of an IRP. The Commission also has adopted its Rules and Regulations for the Government of Telephone Utilities, which regulate Frontier's quality of service, impose certain reporting requirement and provide customer protections regarding disconnection of service and other things. The Commission also regulates Frontier through general orders and the tariff process. (Frontier Exhibit 2, pp. 6-7).

Mr. Swatts explained that Frontier voluntarily exceeds the minimum requirement established by the Federal Communications Commission for eligible telecommunications carriers, in some cases because it wants to provide high quality service to its customers or because it has agreed to do so as a condition of receiving other benefits in an IRP. Because of state regulatory requirements, however, Frontier has no choice but to exceed some of the Federal minimum requirements for eligible telecommunications carriers, such as the requirements to provide equal access and to comply with the Winfield plan. According to Mr. Swatts, all of the regulations and the provision of Universal Service funds to Frontier insure that customers receive a consistently high quality of service at affordable rates. They also assure customers the ability to address service problems quickly and effectively and provide fair treatment of customers. (Frontier Exhibit 2, pp. 7-8).

Frontier's Universal Service Fund receipts effectively reduce the rates that Frontier otherwise would charge its customers. All incumbent local exchange carrier ETCs are subject to the full array of Commission regulations to which Frontier is subject, although the Commission uses rate of return regulation to regulate the rates of incumbents other than Frontier and Verizon. Wireline competitive local exchange carriers (CLECs) also are subject to these requirements, except that the Commission does not regulate their rates. However, Easterbrooke is not subject to these same requirements. The Commission does not regulate Easterbrooke's rates and does not require Easterbrooke to file tariffs, provide equal access or comply with the Winfield plan. Additionally, the Commission's Telephone Rules exempt wireless carriers from some of their provisions, principally related to disconnection of service for nonpayment, deferred payment plans, the taking of deposits and other types of customer protections. (Frontier Exhibit 2, pp. 8-9).

According to Mr. Swatts, Easterbrooke does not compete with Frontier. Mr. Swatts doubts that Frontier's customers will be giving up their wireline phones even if they have a wireless phone. He explained that West Virginians who have wireless phones also tend to have a wireline phone and they use those two telephones for different purposes and in different ways. He believes that West Virginia consumers do not view wireless and wireline services to be substitutes or competitors. Therefore, in its strategic planning, Frontier does not consider wireless services and does not market in response to Easterbrooke's promotions, although it aggressively markets in response to competitive entry by carriers that offer substitute service, such as Hardy Telephone Company or Fibernet. (Frontier Exhibit 2, pp. 9-10).

Mr. Swatts is of the opinion that the service offered by Easterbrooke does not satisfy the minimum requirements for being an eligible telecommunications carrier. First, Easterbrooke has not entered into an interconnection agreement with Frontier to exchange traffic in accordance with Section 251 of the Communications Act. Instead, it routes traffic to Frontier via tandems operated by Verizon, without paying Frontier reciprocal compensation. Mr. Swatts believes that, until Easterbrooke enters into an interconnection agreement with Frontier, it should not be considered to provide access to the public switched telephone network, which is one of the nine services Easterbrooke must provide in order to become an eligible telecommunications carrier. (Frontier Exhibit 2, p. 10). Further, Easterbrooke has no ability to provide the nine supported services in those portions of Frontier's study areas outside of its wireless licensed areas. It has not entered into an interconnection agreement with Frontier that would allow it to provide service outside of its wireless licensed service area and it neither offers nor advertises services in the part of Frontier's study areas that lie outside its wireless licensed area. (Frontier Exhibit 2, pp. 10-11).

Mr. Swatts is of the opinion that it is not in the public interest to designate Easterbrooke as an eligible telecommunications carrier in Frontier's study areas. Principally, he believes that it make no economic sense to provide universal service support to more than one area and one carrier in Frontier's study areas because those areas are costly to serve and each one qualifies for federal high cost support. According to Mr. Swatts, when a study area qualifies for high cost support, this constitutes an implicit finding that, but for the Universal Service Fund, quality telephone service would not be available in that area at rates comparable to those charged in urban areas. He believes that, if a study area cannot support even one carrier without Universal Service Funds, it make no economic or policy sense to support additional carriers in that area. He believes this is especially true because the customers ultimately provide the monies to go into the Universal Service Fund for redistribution. (Frontier Exhibit 2, p. 11). According to Mr. Swatts, the fundamental purpose of Universal Service Fund support is to insure that telephone service is available in high cost areas where otherwise there would be no service. That objective has already been achieved. He believes that Universal Service support should not be used simply to foster competition or insure the viability of a competitor. He argued that, since Easterbrooke does not compete with Frontier, any Universal Service Fund support it receives presumably would be used to enable it to more effectively compete with other wireless carriers. According to Mr. Swatts, this is not an appropriate use of Universal Service Fund monies nor is it in the public interest. (Frontier Exhibit 2, pp. 11-12).

While Mr. Swatts acknowledged that it would be a good thing to have wireless services, and services such as high speed internet and other high speed data services, available everywhere in the state, doing so would require massive subsidies in the areas that Frontier services. He pointed out that Congress and the Federal Communications Commission have made the policy decision to allow the Federal Universal Service Fund to support only the nine specified services. Once those services are available in a high cost area at rates comparable to those charged in more urban areas, the Federal Universal Service Fund had fulfilled its obligation. He stated that, if the Public Service Commission wants to support additional services, it should consider the creation of a state Universal Service Fund to promote those policy goals. (Frontier Exhibit 2, p. 12).

According to Mr. Swatts, the areas served by Frontier in all three of its study areas are so costly to serve, that, without Universal Service Fund support, Frontier could not maintain its service quality level and rates. Rates would have to rise to a level that few, if any, of its customers would be willing to pay. According to Mr. Swatts, under Frontier's Universal Service Fund disaggregation plan, which targets Universal Service Fund monies to the most costly areas, some of Frontier's wire centers receive over $100.00 of support per line per month. (Frontier Exhibit 2, p. 13).

Mr. Swatts testified that there are also other reasons why designating Easterbrooke as an eligible telecommunications carrier in Frontier's study areas is not in the public interest. According to Mr. Swatts, providing Universal Service Fund monies to Easterbrooke will provide it with a windfall. Universal Service Fund support only recently became available to wireless carriers. However, their business plans were established and their rates were set without reliance on or the expectation of receiving Universal Service Funds. Therefore, giving them Universal Service Fund support is a windfall. (Frontier Exhibit 2, p. 13). Additionally, Easterbrooke and other wireless carriers licensed to service rural areas have an ability to cream skin or arbitrage the Universal Service Fund mechanism by obtaining too much Universal Service Fund support relative to the areas they serve and their costs. He believes this is possible because additional eligible telecommunications carriers receive the same amount of Universal Service funding that Frontier receives on a per-line basis. This per-line amount is based on the billing address of the customer. Further, Easterbrooke's service is mobile. Thus, these factors together allow Easterbrooke to receive support that is targeted to the highest-cost areas while actually providing service in the lowest-cost areas. Mr. Swatts believes that this is an unavoidable outcome given the mobile nature of Easterbrooke's service. Further, Easterbrooke would receive support based on the costs of wireline technology, which is generally higher than wireless technology. (Frontier Exhibit 2, page 14).

According to Mr. Swatts, Frontier's disaggregation plan did not solve the cream skimming problem with respect to wireless carriers. Frontier's plan targets its Universal Service Fund receipts so that most of the support goes to the highest-cost areas to serve, where, he believes, Easterbrooke is least likely to have signal coverage, while little or no support is targeted to the lower-cost portions of Frontier's service area, which is where Easterbrooke is most likely to have signal coverage. Whenever Easterbrooke signs up a customer who lives in a high-cost wire center, it receives the amount of support targeted to that wire center, even if it only provides service to the customer when he or she visits a low-cost area where there is signal coverage. Mr. Swatts asserted that Frontier was not suggesting that Easterbrooke had any ill intent, but Frontier believes that the cream skimming and windfall problems occur as a result of the inherently mobile nature of wireless service. Because of the mobile nature of wireless service, customers who have no coverage at their billing address often buy wireless service anyway in order to be able to use it away from home. Mr. Swatts also argued that few wireless customers use their wireless service at home, which will unavoidably result in cream skimming or arbitrage. (Frontier Exhibit 2, pp. 14-15).

Mr. Swatts also argued that it is not in the public interest to designate Easterbrooke as an eligible telecommunications carrier in Frontier's study areas because Easterbrooke does not provide equal access, does not comply with the Winfield plan and is exempt from portions of the Commission's Telephone Rules, particularly key consumer protection rules related to discontinuation of service and other issues. He also again mentioned that Frontier believes that Easterbrooke is obligated to enter into an interconnection agreement with Frontier for the mutual exchange of traffic and to pay reciprocal compensation for that traffic exchange. He argued that, until Easterbrooke fulfills its interconnection obligations, it is not in the public interest to designate it as an eligible telecommunications carrier. (Frontier Exhibit 2, pp. 15-16).

Mr. Swatts also denied that the benefits of competitive entry by Easterbrooke were sufficient to support a public interest finding in this case. He again argued that Easterbrooke does not compete with Frontier, but, rather, competes only with other wireless carriers. Universal Service Fund monies he argues are provided for the purpose of fostering competition. Universal Service was intended to insure that people in all areas of the nation would have quality telephone service at affordable rates, by providing carriers a method of cost recovery other than user rates. The goal was to insure that telephone service was available where otherwise there would be none because it would cost too much to provide it. While the Telecommunications Act of 1996 did introduce competition and permit additional eligible telecommunications carriers to receive Universal Service Funds, he argued that no one, other than wireless carriers, is suggesting that Universal Service support is to be used to promote competition. He argued that the Federal Communications Commission is beginning to step away from its previous position that the goal of promoting competition was enough to satisfy the public interest test. (Frontier Exhibit 2, pp. 16-17).

Mr. Swatts argued that, if the Commission decides to designate Easterbrooke as an eligible telecommunications carrier, it should condition that designation on Easterbrooke having to provide equal access; comply with the Winfield plan; comply with the Commission's Telephone Rules; file informational tariffs and post them on its website; reduce rates by the amount of per-line Universal Service Fund monies received, or, in the alternative, use all Universal Service Fund monies received for incremental capital investment or a combination of the two; submit to annual Commission review of how its Universal Service Fund receipts were used, including a review of its infrastructure development plan; take all necessary steps to provide service to all customers who make reasonable requests, by modifying or building out the wireless network or by providing service using wireline or other technologies, including resale and the use of unbundled network elements; and the designation would exist only as long as the incumbent local exchange carrier's Universal Service Fund receipts are not reduced when an additional eligible telecommunications carrier is designated in its study area(s). (Frontier Exhibit 2, pp. 18-19).

Mr. Swatts testified that these conditions do not create greater burdens on Easterbrooke than those applied to other eligible telecommunications carriers in West Virginia, but, instead, are far less than those faced by other eligible telecommunications carriers in West Virginia. He noted that Frontier and the other incumbent local exchange carrier ETCs are subject to rate regulation and greater tariff requirements, while competitive local exchange carrier ETCs are also subject to tarriffing requirements, although they are not rate regulated. (Frontier Exhibit 2, p. 19). Frontier is not suggesting that Easterbrook's rates be regulated, because federal law prevents states from regulating the rates of wireless carriers. Further, since the Commission does not regulate the rates of CLECs, Frontier does not believe the full rate regulation of wireless carriers is critical. However, in order to insure that Easterbrooke does not get a windfall from its ETC designation, Frontier has suggested that the Commission require Easterbrooke to reduce its existing rates by the amount of Universal Service support it receives, which will insure that its rates take into account the fact that it is receiving Universal Service Funds. (Frontier Exhibit 2, pp. 19-20). As an alternative, Frontier believes that infrastructure investment is another acceptable use of Universal Service Funds by ETCs. Easterbrooke could use those funds to build out its network and improve signal coverage. (Frontier Exhibit 2, p. 20).

Mr. Swatts noted that each ETC must annually obtain from the Public Service Commission a certification that it is properly using its Universal Service Fund receipts. This certification must be filed with the FCC and the Universal Service Administrative Company (USAC). If the certification is not filed, the ETC does not receive future USF support. Mr. Swatts believes that this certification will provide the Commission with an opportunity to police and enforce the conditions it imposes upon the use of USF support by Easterbrooke. If necessary, the Commission can revoke Easterbrooke's ETC designation if it found that Easterbrooke is not in compliance with the designation. (Frontier Exhibit 2, pp. 20-21).

Frontier does not believe that its conditions create a barrier to entry or have the effect of creating a barrier to entry. Mr. Swatts noted that Easterbrooke has been providing service in a Frontier's study areas for years. Conditioning Easterbrooke's ETC designation on certain conditions does not prevent or impede it from providing service. Further, Easterbrooke obtained its cellular licenses and began providing service years before Universal Service Funds became available to wireless carriers. Mr. Swatts believe it is illogical to claim that not allowing it to have access to Universal Service Fund support now is somehow a barrier to entry. (Frontier Exhibit 2, p. 22).

In conclusion, Mr. Swatts testified that the conditions he proposed only reduce, but do not eliminate, the public interest harms that will result from designating Easterbrooke as an ETC in Frontier's study areas. Even with those conditions, he believes that it is not in the public interest to designate Easterbrooke as an ETC in Frontier's study areas. Frontier proposed those conditions simply to reduce the harm that will result if the Commission decides to designate Easterbrooke as an ETC in Frontier's study areas. (Frontier Exhibit 2, pp. 23-24).

Mr. Swatts, during his testimony on the stand, explained that Frontier was not willing to stipulate that Easterbrooke provides access to the PSTN because it is Frontier's understanding that its customers in the study areas don't have the ability to call Easterbrooke's cellular numbers sometimes in the manner that they should be able to dial those numbers. There are some Frontier exchanges that are local to Easterbrooke's Elkins switch, but which didn't have Easterbrooke's calling codes open and, therefore, Frontier's customers are not able to make local calls where they should be able to in some cases. He explained that, typically, when a new code is opened outside of Frontier's service territory, but local to its exchanges, the carrier that opens the code calls Frontier and asks that it be opened. If Frontier isn't notified by the carrier and Frontier ultimately finds out that the code is not available through a complaint filed by a Frontier customer, Frontier will contact the carrier and they work out an appropriate interconnection agreement. However, Frontier hasn't received any complaints from its customers about not being able to access any Easterbrooke telephone numbers. (Tr., pp. 135-137). He acknowledged that customers are making those calls to the Elkins switch, so the calls are getting through, but the codes should be opened in Frontier's switches as local calls and not long distance calls. Mr. Swatts again acknowledged that Frontier's data base people are unaware of any complaints regarding this issue and he had spoken to them the morning of the hearing. (Tr., p. 140).

Mr. Swatts testified that he did not compare Easterbrooke's rate plans to Frontier's rate plans. He again testified that Easterbrooke is not a competitor of Frontier. At this time, Frontier views wireless providers as supplemental services. Easterbrooke is not seeking ETC designation in Frontier's Bluefield study area. (Tr., pp. 142-143).

The first rebuttal testimony was presented by Mr. Wood on behalf of Easterbrooke. Mr. Wood responded to the direct testimony prepared by Frontier's witness Swatts. In summary, Mr. Wood believes that Mr. Swatts' arguments are unsupported by either facts or sound public policy and have been explicitly rejected by State regulators, the FCC or both. (Easterbrooke Exhibit 2B, p. 4). Mr. Wood argued that Mr. Swatts devoted the bulk of his testimony to a discussion of broad policy issues that are beyond the scope of this proceeding. Mr. Wood again emphasized that it is the interest of the public that must be considered, while the interests of individual carriers or categories of carriers are secondary considerations, if they are to be considered at all, in determining whether or not to designate an additional ETC in a service territory. (Easterbrooke Exhibit 2B, p. 6). Mr. Wood also argued that opening telecommunications markets to competition, including rural areas, is one of the explicit objectives of the Telecommunications Act of 1996, including Section 254. Mr. Wood asserted that Mr. Swatts' argument that, if one carrier already offers basic services in the subject market there is no need to make additional USF support available in that region, is off the mark and in violation of the Telecommunications Act of 1996. (Easterbrooke Exhibit 2B, pp. 7-8).

Mr. Wood pointed out that Mr. Swatts provided no specific facts related to any of Frontier's rural ILEC service areas that would justify rejection of Easterbrooke's petition. He argued that Frontier offered no facts that would support a decision that it is not in the public interest to designate Easterbrooke as an ETC in Frontier's study areas. (Frontier Exhibit 2B, p. 9).

Mr. Wood testified that he had no problem with the application of a cost-benefit analysis in this proceeding, as long as both the benefits and costs considered are specific to this proceeding. He noted that Easterbrooke presented facts that are specific to its West Virginia service area and operations. In contrast, Mr. Swatts argued that the costs to be examined include the impact on the size of the Federal fund, the impact of supporting multiple networks and whether or not wireless and wireline services are substitutes. (Easterbrooke Exhibit 2B, pp. 9-10).

Mr. Wood believes that the Commission should apply the same standard in this proceeding that it has applied when it reviewed other ETC applications. He noted that other State regulators have chosen to consider the FCC's investigation of an ETC petition filed by RCC Holdings in Alabama as a template for their own public interest analysis. That case represented an instance where the FCC applied its own standard and described in detail the scope of the facts considered and the reasoning behind its decision. The FCC included a description of the benefits that it believed rural consumers would receive as a result of the designation of RCC Holdings as an ETC, but it did not include the broad speculation about potential costs considered essential by Mr. Swatts. (Easterbrooke Exhibit 2B, pp. 11-12).

Mr. Wood reiterated that the people who live and work in the rural areas that are the subject of Easterbrooke's application will benefit from its designation as an ETC. He noted that Easterbrooke has made the commitment to offer and advertise the nine supported services throughout its service territory. Easterbrooke will provide residences and businesses in the specified areas with important options. End users will be able to choose the technology, either wireline or wireless, that best meets their individual needs and will be able to choose between rate plans that will allow them to closely match the service they receive with their calling patterns and frequency. Further, end users will have greater access to the personal and public safety benefits of wireless service. (Easterbrooke Exhibit 2B, pp. 12-13). Mr. Wood stated that there is nothing in the service territory in which Easterbrooke is seeking ETC designation that would outweigh the benefits to be gained from ETC designation. (Easterbrooke Exhibit 2B, pp. 13-14). Mr. Wood argued that, despite Frontier's claims, one of the main goals of the Telecommunications Act of 1996, and subsequent FCC Orders, was to facilitate the entry of competitive carriers to rural, insular and high cost areas so that customers would have meaningful competitive choices, which would further the goal of rural/urban parity. He noted that this ETC proceeding is precisely about facilitating that kind of competition. (Easterbrooke Exhibit 2B, p. 15).

Mr. Wood also argued that Mr. Swatts' observation that customers have historically not substituted wireless service for wireline service in rural areas is a poor predictor of the future. First, the previous levels of coverage and service quality provided by wireless carriers, prior to receiving any USF support, were unlikely to approach the levels needed by customers to consider the wireless service as a substitute for wireline service. He noted that wireline carriers would not be providing such quality service with broad geographic coverage without an extended history of receiving USF support. Second, customers have been reluctant to substitute wireless for wireline service in part because telephone numbers were not portable. A customer that historically subscribed to service from Frontier could not cancel that service and subscribe to local service offered by Easterbrooke without giving up his or her long-held telephone number. However, wireline to wireless number portability, recently ordered by the FCC, eliminates that barrier, making substitution of wireless for wireline service more likely. (Easterbrooke Exhibit 2B, p. 16).

Mr. Wood also noted that Mr. Swatts had no factual support at all for his suggestion that Easterbrooke would use any federal support funds in an inappropriate manner. Mr. Wood noted that the use of federal support funds is specifically for the provision, maintenance and upgrading of facilities and service for which the support is intended. Easterbrooke is only permitted to use those funds for specific purposes, which will provide benefits to the people who live and work in these rural areas. Additionally, other safeguards are applicable. The USAC can conduct audits to insure that the use of support funds by any ETC complies with the requirements of the Telecommunications Act of 1996. Further, the Public Service Commission has the ability and responsibility to insure that funds received by Easterbrooke or any other ETC are used appropriately. Easterbrooke will work with the Commission in the annual recertification process to insure that the Commission has the information necessary to fully understand how Easterbrooke used all of the USF funds it received. Mr. Wood believes that there is no reason to assume that the Commission will not fulfill its annual duties in this regard. Finally, wireless carriers like Easterbrooke are licensed by the FCC, which has the authority to investigate their operations and institute punitive measures if necessary. The presence of all of these safeguards will insure that the funds will be used as intended and that Easterbrooke will be held to the kind of accountability that Frontier suggests, without the need for the additional requirements proposed by Mr. Swatts. (Easterbrooke Exhibit 2B, pp. 17-18).

With respect to Frontier's claims that customers who do not currently have coverage at their business may nonetheless use a wireless phone when away from their billing address, or that few wireless customers use their service at home, Mr. Wood noted that customers receive benefits from their ability to use a mobile phone in terms of the ability to do their job, convenience, health and safety or some combination of these opportunities, all of which serve the public interest. Further, customers would receive additional benefits if their wireless service was not geographically limited, but instead was extended in scope to include their home or place of employment. According to Mr. Wood, it is the desire to provide this service at the customer's home or business location, i.e., to provide a viable substitute for wireline service, as well as the customer's desire to purchase such a service, that makes the public interest aspect of Easterbrooke's petition clear. Frontier built its networks out over time to reach those areas while receiving universal service support. With the same opportunity, Easterbrooke could build out its network to extend its coverage to provide exactly the coverage that Mr. Swatts argued is lacking. All of these are compelling reasons why Easterbrooke should be designated as an ETC. (Easterbrooke Exhibit 2B, pp. 18-19).

Mr. Wood also disputed that the existing USF mechanism creates a windfall for wireless carriers. First, even if Easterbrooke's per line costs proved to be lower than those of Frontier, no windfall can occur. The rules specifically limit Easterbrooke's use of the funds to the investment in and operation of network facilities in the high cost area. The worst outcome that can be realized is that, if Easterbrooke's per line costs are indeed lower, it will be encouraged to build out its network on an accelerated basis. Once this build-out is complete, support can be based on the more efficient network, thereby minimizing the size of the fund over the long run. Easterbrooke has committed to use all support funds to build out and operate network infrastructure in these rural areas, which is fully consistent with the stated purposes of the USF mechanism and the interests of West Virginia customers. (Easterbrooke Exhibit 2B, pp. 19-20).

Mr. Wood argued that concerns regarding the size of the Federal Universal Service Fund are not relevant to this proceeding because they are not related to any of the specific characteristics of Easterbrooke's petition or to any rural ILEC service area identified in Easterbrooke's petition. Further, to the extent they have merit, both concerns are currently being addressed by the FCC and the Federal-State Joint Board on Universal Service. Mr. Wood believes that it is the Commission's task in this proceeding to apply the ETC rules as they currently exist. He disagrees that ETC designation hearings are the appropriate forum to address broader policy issues related to the USF. (Easterbrooke Exhibit 2B, p. 22).

Mr. Wood also argues that concerns about the size of the funds do not constitute a good reason to deny Easterbrooke ETC status. He argued that growth in the Universal Service Fund was explicitly anticipated and considered by the FCC when it developed the rural Universal Service mechanism. He noted that the FCC rejected several elements that had been proposed for inclusion in the universal support mechanism, even though they would have limited the size of the fund. As an example, he noted that the FCC rejected a proposal by the Rural Task Force to freeze high cost loop support upon competitive entry in high cost areas. (Easterbrooke Exhibit 2B, pp. 23-24).

Mr. Wood also argued that the largest factors relating to the size of the fund are compromise elements that were included in the funding mechanism by the FCC for the benefit of rural telephone companies. He noted that the size of the high cost loop fund in large part is a direct function of the FCC's decision to give the rural ILECs an extended transition period in which to improve their efficiency, reduce their costs and better prepare themselves to operate in a competitive market. He argued that those elements of the mechanism represent a far greater impact on the size of the fund than any concerns related to additional ETC designations. (Easterbrooke Exhibit 2B, pp. 24-25). Mr. Wood noted that rural ILECs asked for and received from the FCC various protections from the impact of competition as part of the interim support mechanism; those protections have caused the size of the high cost fund to increase; and now the rural ILECs are using the fact that the fund is growing as support for an argument that actual competitive entry should be limited. (Easterbrooke Exhibit No. 2B, p. 26).

Mr. Wood also argued that, while the high cost fund should be prudently managed, it should not be managed on a strictly short-term prospective. He argued that the fund should be managed on a long-term basis in a way that focuses on benefits to consumers, rather than carriers. The concern that additional ETC designations mean an increase in demands on the fund is an example of a short-term prospective. He argued that an attempt to minimize the size of the fund on a short-term or quarter-by-quarter basis will almost certainly result in a larger than necessary fund over the long run. He believes that the fact that support to competitive ETCs has grown over the past 18 months simply means that the process of ETC qualification is working as intended. As competitors enter rural markets, support to carriers other than the ILECs inevitably grows. He believes that this should not be viewed as an adverse or an unintended consequence. In the long run, growth and support to competitive ETCs versus growth and support to incumbent ETCs is useful only as a barometer of how well the process is working. (Easterbrooke Exhibit No. 2B, p. 28).

Mr. Wood also took issue with Mr. Swatts' argument that, since Easterbrooke is already providing wireless service in the study areas in which it is requesting ETC designation, there is no public interest in granting ETC designation to Easterbrooke. According to Mr. Wood, there is no dispute that Easterbrooke is currently providing some services in some of the areas served by rural ILECs in West Virginia. But Easterbrooke is making a commitment in this case to provide the supported services throughout those service areas in direct competition with the rural ILECs, which it could not do without USF support. Easterbrooke has made substantial investments in its West Virginia network and provides coverage throughout several areas. Now, however, Easterbrooke is seeking to offer the supported universal services throughout these areas at a level of quality that can compete directly with the current wireline local service offerings. This requires access to USF support, just as access to such support was necessary for the ILECs to make the same commitment. (Easterbrooke Exhibit No. 2B, pp. 30-31). Mr. Wood noted that network build-out will improve service quality and coverage to the point that rural customers may actually find wireless service to be an alternative for wireline service. Such an outcome is fully consistent with the stated objectives of the Act. (Easterbrooke Exhibit No. 2B, p. 31).

Mr. Wood also took issue with the assertions by Mr. Swatts that Easterbrooke should not be designated as an ETC because it cannot offer services outside of its FCC-licensed service area. He noted that the only stated basis for Mr. Swatts' assertion is that Easterbrooke does not directly route traffic to Frontier. Mr. Wood pointed out that such a direct connection is not required in order for an Easterbrooke customer to complete a call to a Frontier customer or vice versa. Easterbrooke routes traffic to Frontier via tandems operated by Verizon. Neither the Act nor the FCC requires every carrier to interconnect directly with every other carrier, recognizing that such an arrangement would be technically infeasible and inefficient. Interconnection through a third-party carrier at the level of an access tandem is feasible, efficient and representative of how the vast majority of carriers, both wireless and wireline, interconnect with each other. (Easterbrooke Exhibit No. 2B, p. 32). According to Mr. Wood, Mr. Swatts' problem is not that Easterbrooke cannot offer the supported services, or that Easterbrooke customers cannot place calls to Frontier customers beyond the Easterbrooke licensed area, or that the traffic is routed by a Verizon tandem. Rather, Mr. Swatts' real issue is reciprocal compensation, which Mr. Wood believes is disingenuous and based on a misunderstanding of the requirements of the Act. Section 251 does not require Easterbrooke to have an interconnection agreement with Frontier unless Frontier requests such an agreement. Frontier has not done so and Easterbrooke is in full compliance with its Section 251 obligations. Mr. Wood noted that Frontier has been making the same assertion in other jurisdictions as well. (Easterbrooke Exhibit No. 2B, pp. 32-33).

Mr. Wood noted that Mr. Swatts was simply wrong when he asserted that the law requires that carriers pay each other reciprocal compensation. Rather, carriers can engage in a mutual exchange of traffic on a payment in kind basis, which is referred to as "bill and keep." Such an arrangement can be formalized in an interconnection agreement or it may be informal. Eaterbrooke is terminating calls originated by Frontier customers and Frontier is terminating calls originated by Easterbrooke customers. If either carrier believes that a payment in kind or bill and keep arrangement is not satisfactory, it can request an interconnection agreement. Neither of these carriers has done so. Mr. Wood noted that the remedy to Mr. Swatts' problem, assuming that Frontier actually seeks a remedy, is to negotiate an interconnection agreement with Easterbrooke. (Easterbrooke Exhibit No. 2B, pp. 33-34).

Mr. Wood also took issue with statements made by Mr. Swatts regarding the cost to serve customers in different geographic areas. He noted that Mr. Swatts stated extensively that rural areas are so expensive to serve that, without high cost support, no carrier could afford to provide that service. Mr. Wood agreed that all things being equal, rural areas are more costly to serve than more urban areas. He disputed Mr. Swatts' assertion that, in the areas served by Frontier, no carrier would find it viable to provide service without USF support and, therefore, USF support should not be available to any other carriers. Mr. Wood asserted that, what Mr. Swatts actually meant was that, absent USF support, it was not viable for another <u>wireline</u> carrier with <u>Frontier's</u> current cost characteristics to serve the area. The initial assumption may be correct, but his conclusion is not logical. Mr. Wood noted that the FCC has consistently concluded that the entry of an additional ETC into a rural area can be expected to provide incentives to the incumbent to implement new operating efficiencies, lower prices and provide better service to its customers. In response to such incentives, Frontier may be able to increase efficiency over time so that a lower level of USF support is needed. Equally important, the designation of an additional ETC, which may have a lower cost structure than Frontier, will enable that additional ETC to build out its network in the area. Over the long run, it may be desirable to fund only a single carrier to serve the area, but the carrier to be funded should be the one that provides service at the lowest cost. (Easterbrooke Exhibit 2B, pp. 34-35).

Mr. Wood also disputed that any additional standards should be imposed upon Easterbrooke in order to obtain ETC designation. Easterbrooke has committed to meeting all of the legal requirements. According to Mr. Wood, the further imposition of additional standards is unnecessary because the competitive market will effectively constrain competitive ETC prices and services. If the ETC's offerings do not meet customer expectations, end users won't purchase the service and the ETC will receive no federal support. Mr. Wood argued that all of the additional standards and requirements recommended by Mr. Swatts will create no public benefit and would act as effective barriers to entry for a wireless carrier. (Easterbrooke Exhibit 2B, pp. 35-36).

Mr. Wood also disputed Mr. Swatts' testimony regarding cream skimming. He noted that the FCC has been clear that it does not consider the fact that a competitive ETC serves only a portion of an ILEC service area to be a demonstration of cream skimming. He noted that USF disaggregation significantly limits the possibility for cream skimming. Further, the FCC has concluded that a cream skimming concern must be based on more than the fact that a competitive ETC will serve less than the ILEC's service area. A cream skimming determination must be based on a showing that the ETC is deliberately seeking to enter certain areas in order to cream skim. Mr. Wood noted that there is no evidence that Easterbrooke is engaging in such a strategy. (Easterbrooke Exhibit No. 2B, pp. 38-39).

According to Mr. Wood, as a practical matter, it is almost impossible to successfully accomplish the objective of cream skimming. In order to be successful, the new entrant needs to incur costs in the same way as the ILEC. Only if the high-cost and low-cost areas of the ILEC and the new entrant match is cream skimming even theoretically possible. Since all parties agree that wireless carriers have a cost structure that is different from that of wireline carriers, cream skimming is not a given. Further, network costs do not vary in a predictable way. It is almost impossible to conclude that network costs vary based on any specific set of criteria. Costs vary on a very discreet geographic scale, making it difficult, if not impossible, to identify individual customers that are low cost and thus represent a cream skimming opportunity. Mr. Wood noted that Easterbrooke has an obligation to serve the entirety of its CMRS licensed area. The FCC has recently concluded that a commitment by a wireless ETC to provide the supported services throughout its licensed service area, even when the contour of its licensed area differs from the study area of the existing telephone companies, indicates that the cellular ETC is not seeking to cream skim and such cream skimming concerns are minimized. (Easterbrooke Exhibit No. 2B, pp. 39-40).

During his testimony on the stand, Mr. Wood addressed Mr. Swatts' recommendation that Easterbrooke be required to use its USF support to reduce rates in the identified high-cost areas, rather than invest in plant. Mr. Wood argued that, if there are rate reductions to be made in the marketplace, Easterbrooke will make them. He noted that Lifeline or Link-Up programs are in place exclusively for the purpose of making the service affordable to low-income subscribers. However, he noted that Section 254 of the Act and corresponding FCC rules provide that the stated purpose and intended use of the funds is for investment and operation and upgrading network facilities. Further, the prudent thing in many cases is to invest those dollars, rather than spend them today. (Tr., pp. 49-50). He argued that there is long-term benefit in providing this kind of infrastructure and these technology options. (Tr., pp. 51-52). Most of the benefits that can be provided are associated with putting dollars in plant today. Simply offering a rate reduction won't accomplish any long-term benefits, such as improved infrastructure, health and safety or the broader coverage of wireless service. (Tr., pp. 51-52).

Mr. Wood argued that the question to be addressed in this case is whether or not designating Easterbrooke as an ETC is in the public interest based on Easterbrooke's merits as a carrier and looking at the study areas in which Easterbrooke is seeking ETC status. (Tr., pp. 54-55). He argued that the test proposed by both Mr. Swatts and the Consumer Advocate Division, which indicates that the cost of serving some of these areas is so high that they could not support another ETC designation, are based on the costliness of a wireline carrier operating under Frontier's costs as measured by the FCC. He argued that a high-cost area to a wire-line carrier is not necessarily the same as a high-cost area to a wireless carrier. (Tr., pp. 54-57).

Mr. Wood also discussed the bill and keep arrangement in more detail. Bill and keep simply means that one carrier terminates calls originated on another carrier's network in exchange for the second carrier terminating the first carrier's customers calls. The actual dollars related to those calls aren't transferred back and forth. Rather, it is an exchange of a service or value. Bill and keep is the de facto arrangement between two carriers who don't have an interconnection agreement and represents the arrangement currently in effect between Easterbrooke and Frontier. (Tr., pp. 82-83). Mr. Wood noted that there are between 1,700 and 1,800 local exchange companies nationwide and regulators don't want everyone trying to make a physical connection to each other. Bill and keep accomplishes indirectly what otherwise would be done directly. Further, Mr. Wood pointed out that Section 251(a)states that interconnection can be direct or indirect. If Frontier believes that Easterbrooke should have an interconnection agreement with it and asks Easterbrooke to enter into such an agreement, Easterbrooke would have a duty to negotiate in good faith. If the negotiation failed, Frontier could bring the matter to the Public Service Commission for arbitration. (Tr., pp. 83-84).

Frontier presented rebuttal testimony from its witness Swatts. Mr. Swatts denied that Frontier was seeking to put competition on trial or to claim that competition is not in the public interest. He noted that competitors are free to enter Frontier's study area at their own discretion and that Frontier has waived its rural exemption in West Virginia, absent which competitors could not obtain wholesale discounts for reselling Frontier's services or obtain unbundled network elements from Frontier. Therefore, despite the fact that Frontier is an RTC, other carriers are free to compete with it by building their own networks, by reselling Frontier's services or by purchasing unbundled network elements from Frontier. (Frontier Exhibit 3, pp. 2-3).

Mr. Swatts again argued that Easterbrooke does not compete with Frontier. Therefore, regardless of whatever benefits may flow from competition, those benefits are not present here. Second, the promotion of competition is not a relevant consideration in examining the public interest. If the promotion of competition by itself were enough to satisfy the public interest test, there would be no need for the test.

While there is a general policy goal of promoting competition, universal service is a separate policy goal which must be examined on its own merits. Additionally, the promotion of competition is not a goal of universal service and the universal service mechanism cannot be used as a means of promoting competition. Finally, Easterbrooke is not a new entrant and providing it with USF monies will not create a new competitor, increase competition or give consumers a choice they don't already have. Easterbrooke has provided service since 1990 and claims to already be providing the services supported by the Universal Service Fund. (Frontier Exhibit 3, pp. 3-4). Mr. Swatts argued that neither Mr. McGaw nor Mr. Wood identified any benefit in their testimony to support their claims that designating Easterbrooke as an ETC is in the public interest, other than competitive entry. (Frontier Exhibit 3, p. 5). Mr. Swatts also argued that Easterbrooke really only competes with other wireless carriers, and such competition will only intensify with the recent advent of wireless local number portability. (Frontier Exhibit 3, p. 6).

Mr. Swatts agreed with the various steps laid out by Mr. McGaw in his testimony that Easterbrooke is willing to take in order to extend service to customers who live in areas where Easterbrooke's cellular signal does not currently reach. However, Mr. Swatts believes that those steps by themselves are inadequate. He believes that Easterbrooke should also utilize other technologies that are available to it if it cannot economically serve a customer using wireless technology. USF monies are to be used to provide the nine supported services, regardless of the technology used. If an ETC is not willing to use all available technologies, it should not be so designated. (Frontier Exhibit 3, p. 6). Mr. Swatts acknowledged that building out Easterbrooke's network would be a permissible use of USF monies. But he argued that rate reduction is also a permissible use and one that should have the greatest impact on the availability of Easterbrooke's service, particularly in light of Easterbrooke's testimony that relatively modest income levels and significant poverty are challenges to Easterbrooke's efforts to satisfy its coverage and service objectives. (Frontier Exhibit 3, pp. 7-8).

Mr. Swatts agreed with the Consumer Advocate Division's assessment of the percentage of total revenue that each of its study areas receives from the Universal Service Fund. The St. Mary's Study area receives approximately 27% of its total revenue from USF support. It would be a significant harm to Frontier if it were to loose 27% of its total revenues and would have to raise rates. (Tr., pp. 138-139). Mr. Swatts also testified that, while he doesn't know where the break point is, he knows that there is a break point where it makes no sense to fund two or more networks under the USF mechanism. He agreed that there were no public interest tests for non-rural carriers, such as Verizon, although these non-rural carriers do receive support from the Universal Service Fund. Verizon receives approximately $3.00 per line per month from the USF. He agreed that $8.00 per line might be a reasonable break point. (Tr., pp. 143-145).

The last witness to provide rebuttal testimony in this proceeding was Billy Jack Gregg, the Director of the Consumer Advocate Division of the Public Service Commission. Mr. Gregg has been the Director of the Commission's Consumer Advocate Division since 1981, and has been extensively involved in regulatory issues since that time, not only in his position as Director of the Consumer Advocate Division, but in his participation in the National Association of State Utility Consumer Advocates, the Rural Task Force of the Federal-State Joint Board on Universal Service, the Board of Directors of the National Regulatory Research Institute and, since March of 2002, as a member of the Federal-State Joint Board on Universal Service. Mr. Gregg has also been a member of the Board of Directors of the Universal Service Company. (CAD Exhibit 2, Appendix A). The CAD believes that it is in the public interest to grant ETC status to Easterbrooke in a portion of the area served by Frontier, but not in all of the Frontier study areas for which the petition was made. Specifically, the CAD is recommending that Easterbrooke be granted ETC status in the wire centers contained in Frontier's St. Mary's study area, i.e., Davis, Thomas, Canaan Valley, Parsons, Clay, Harmon, Ivydale, Widen and Birch River. The CAD is recommending that Easterbrooke be denied ETC status in the wire centers contained in Frontier's Mountain State study area, i.e., Webster Springs, Mill Creek, Cowan, Arbovale, Marlinton, Hillsboro, Snowshoe, Walkersville and Hacker Valley. The CAD's recommendation is based primarily on the cost to serve those areas and the level of federal universal service support received by each study area. (CAD Exhibit 2, pp. 1-2). Mr. Gregg also asserted that the maps submitted by Easterbrooke in this proceeding contain numerous errors and cannot be relied upon. He also recommended that Easterbrooke be directed to serve all customers in the wire centers for which it is granted ETC designation, regardless of whether some of those wire centers extend beyond Easterbrooke's licensed wireless service territory and that the Commission should impose conditions upon any ETC designation of Easterbrooke in order to ensure that the ETC requirements continue to be met on an ongoing basis and that the USF funds are used for their intended purpose. (CAD Exhibit 2, p. 2).

Mr. Gregg reiterated that Easterbrooke is licensed to provide wireless services in WV RSA 5, consisting of Braxton, Clay, Nicholas, Webster, Pocahontas, Randolph, Upshur and Tucker Counties. He also reiterated that Easterbrooke had previously received ETC designation in the wire center served by Verizon within its licensed service areas. He listed the counties and wire centers for which Easterbrooke is seeking ETC designation in Frontier's territory. (CAD Exhibit 2, Exhibit BJG-1). He noted that, while Frontier has three study areas in West Virginia, the Frontier wire centers affected by Easterbrooke's application are located in the St. Mary's and Mountain State study areas. Mr. Gregg also listed the wire centers affected by Easterbrooke's application by Frontier study area. (CAD Exhibit 2, pp. 3-4).

Mr. Gregg also defined study area, which is generally an incumbent telephone company's preexisting service territory within a state. The boundaries of the study areas were established as of November 15, 1984, by FCC Order. Frontier's three study areas correspond to the service territories of the previous owners of those service territories. The Bluefield study area is made up of wire centers formerly owned by General Telephone. The St. Mary's study area is made up of wire centers formerly owned by Contel. The Mountain State study area is made up of wire centers formerly owned by AllTel. While a company such as Frontier may operate as a single company within a state, federal universal service support is determined on a study area basis. (CAD Exhibit 2, p. 4). The

Exhibit BJG-2 attached to CAD Exhibit 2 shows the disaggregated per line high cost support for each Frontier wire center in both study areas affected by Easterbrooke's application. He also provided the annual support which results from this per line support. The wire centers in the Mountain State study area produce support of approximately $7.9 million per year, while the St. Mary's study area wire centers produce support of approximately $2.3 million per year. (CAD Exhibit 2, Exhibit BJG 2).

Mr. Gregg indicated that he partially agreed with the arguments made by the witnesses for both of the other parties. He noted that designation of an additional ETC would provide additional choices, competition and improvement of the ETC's network. He noted, however, that this will always be the case when an additional subsidized carrier is designated. He agreed with Frontier witness Swatts that, if the benefits of competition alone were enough to satisfy the public interest test, Congress would not have established a separate public interest test for ETC applicants in rural study areas. It simply would have mandated ETC designation upon a showing that the applicant can provide the supported services and advertise their availability, just as it did for the non-rural study areas. (CAD Exhibit 2, p. 6).

However, Mr. Gregg disagreed with Mr. Swatts' testimony that no additional ETC should be allowed in Frontier's study areas because those study areas receive USF support. He noted that numerous non-rural carriers receive USF support and Congress made a policy decision that additional ETCs should be allowed in those areas, assuming they can provide and advertise the supported services. Mr. Gregg noted that the highest amount of USF high cost support received by a non-rural carrier is approximately $8.00 per line per month, received by Puerto Rico Telephone Company. (CAD Exhibit 2, p. 6). Mr. Gregg agreed with Mr. Swatts, however, that there are areas that are so costly to serve that it would make no sense to support an additional subsidized carrier. It is Mr. Gregg's belief that this is one of the reasons why Congress made ETC designation in rural study areas discretionary with state commissions and only if those designations were found to be in the public interest. While he did not agree that all rural study areas that receive high cost support should be exempt from having additional ETCs, Mr. Gregg did believe that the higher the level of support received by a study area, the greater the scrutiny that an ETC application for that area should receive. He believes that the public interest test essentially is a cost benefit analysis, i.e., whether the cost and potential harm of supporting an additional subsidized carrier in a rural study area outweigh the benefits resulting from having an additional ETC. (CAD Exhibit 2, p. 7).

Mr. Gregg acknowledged that, under the current rules, the federal universal service mechanism supports all lines of all ETCs and that allowing an additional ETC in Frontier's study areas will not result in any reduction in the support it receives. However, he noted that, because of concerns about the growing size of the fund, there are several proposals to limit support to only primary lines or to only one ETC per customer. If any of those proposals are adopted by the Joint Board and/or the FCC, USF funding will be contestable among all ETCs and could lead, ultimately, to a reduction of support for all ETCs, including incumbents. (CAD Exhibit 2, p. 7).

For the fourth quarter of 2003, the St. Mary's study area received an average of $16.81 per line in monthly high cost support. The Mountain State study area receives over twice as much, approximately $37.76 per line in monthly high cost support. Mr. Gregg's Exhibit BJG-3 shows the total revenue of each ILEC in West Virginia for 2002, along with the amount of federal universal service support received by each carrier. USF high cost support constitutes almost 44% of the total revenue generated in the Mountain State study area and 27% of the total revenue generated in the St. Mary's study area. (CAD Exhibit 2, p. 8 and Exhibit BJG-3).

According to Mr. Gregg, the national average residential rate for flat rate service in urban areas is $23.28 per month. The average residential rate in West Virginia is higher. The FCC reference book lists Verizon's average rate in West Virginia as $28.61 a month. Frontier's average residential rate would probably be slightly higher, approximately $30.00 per month. The amount of per line federal high cost support in the St. Mary's study area is less than the national average residential rate and the average Frontier residential rate. However, the amount of per line support received in the Mountain State study area is higher than the average national rate and the average rate for Frontier. According to Mr. Gregg, this indicates that it is extremely expensive to provide service in the wire centers located in Frontier's Mountain State study area. (CAD Exhibit 2, pp. 8-9).

It is Mr. Gregg's belief that the levels of high cost support received in the St. Mary's study area are low enough that more than one ETC can be supported, and that the cost and potential harm for such additional support are not excessive. Therefore, he believes that it is in the public interest to grant Easterbrooke's ETC application in the St. Mary's study area, subject to certain conditions. However, because of the high levels of support received in the Mountain State study area, he believes that it is not in the public interest to designate Easterbrooke as an ETC for the wire centers in that study area. He believes that the high level of support received in the Mountain State study area makes this an area where the number of ETCs should be limited. (CAD Exhibit 2, pp. 9-10).

Mr. Gregg asserted that, while a by-product of USF funding may be that certain wireless networks are strengthened and expanded, it is not the purpose of USF funding to build out wireless networks in rural areas. The purpose of USF funding is to help provide the supported services and the facilities necessary to provide those services, regardless of the technology used to provide them. He noted that wireless services and mobility are not supported services. (CAD Exhibit 2, p. 10). He noted that deciding whether to allow multiple supported carriers in a rural area is a balancing act, weighing the cost and potential harm in supporting ETCs against the benefits of receiving additional funding. He argued that it must be remembered that funding for the Universal Service Fund comes directly from customers and all parties have a responsibility to ensure that these limited resources are used in a responsible way. He believes that there are some areas where it is so expensive to provide service that it makes no sense to support more than one subsidized carrier and he believes that the Mountain State study area is one of those areas. (CAD Exhibit 2, p. 10).

In Mr. Gregg's testimony, including the two corrected pages that are contained in Exhibit 2A, being pages 11 and 12 of his prepared testimony, and a corrected Exhibit BJG-1, Mr. Gregg discussed the accuracy of the maps provided by Easterbrooke, attached to Mr. McGaw's testimony. The boundaries of the wire centers contained in those maps were drawn by a nationally available software program, but they did not match the official exchange boundary maps on file at the Commission. He believes that Exhibit BJG-1 provides a more accurate representation of those exchange boundaries. However, he believes that the inaccuracy of the boundaries shown on the Easterbrooke exhibits have little impact on Easterbrooke's ETC application, except for wire center areas which extend beyond the boundaries of Easterbrooke's eight-county service area. (CAD Exhibit 2A, p. 11). He noted that, while Easterbrooke is licensed to provide wireless service within the eight-county area previously discussed, some of the Frontier wire centers, within which Easterbrooke seeks ETC status, extend beyond its licensed territory. There are two areas where the Frontier wire center boundaries extend beyond the county boundaries, i.e., Frontier's Walkersville wire center in Lewis County serves a portion of northern Braxton County included in Easterbrooke's petition and the Thomas and Davis wire centers serve the western portion of Grant County, which is not part of WV RSA 5 and, therefore, is not included in Easterbrooke's application. There are also several wire centers in the Verizon service area where Easterbrooke has already been granted ETC status that differ from the boundaries of WV RSA 5, although those areas are not at issue in this case. (CAD Exhibit 2A, pp. 11-12 and Exhibit BJG-1).

According to Mr. Gregg, the Commission should specify that Easterbrooke is granted ETC status within the boundaries of designated wire centers, regardless of whether the boundaries of those wire centers extend beyond the county boundaries within which Easterbrooke is licensed to provide wireless service. (CAD Exhibit 2A, p. 12; CAD Exhibit 2, p. 13). Mr. Gregg noted that Easterbrooke's wireless signal extends beyond the boundaries of the eight counties within which it is licensed to provide wireless service and Easterbrooke is not limited to providing its own wireless services, but may provide service through resale of wireline or other wireless services. He believes that requiring Easterbrooke to provide service throughout existing wire centers uses readily determined existing boundaries and will avoid the problem in defining a service area smaller than an individual wire center. (CAD Exhibit 2, p. 13).

Mr. Gregg testified that, in this case, the Commission should follow the procedures set forth in Section 214(e)(5) of the Act and Section 54.207 of the FCC's regulations which provide for redefinition of a service area and redefine Easterbrooke's service area to include the Frontier wire centers of Clay, Ivydale, Widen, Birch River, Harmon, Parsons, Thomas, Davis and Canaan Valley. Following the issuance of an Order approving ETC status in this case, the Commission should direct Staff to file a petition with the FCC seeking its concurrence in this service area redefinition. (CAD Exhibit 2, pp. 13-14).

With respect to the conditions recommended by Frontier witness Swatts, to be placed on Easterbrooke if it is granted ETC status, Mr. Gregg recommended that Easterbrooke be held to the same conditions which have previously been placed on ETCs, in Easterbrooke's own ETC designation case involving the Verizon wire centers, Case No. 02-1118-T-PC, and in the Highland Cellular case, Case No. 02-1453-T-PC, which is still pending. These conditions include obligations to provide service when customers are unable to receive an adequate signal; the filing of periodic reports to the Commission on unserved areas and network deployment; the filing of informational tariffs with the Commission, including the terms of Lifeline and Link-Up programs for low-income customers; and the filing of annual reports with the Commission demonstrating how the USF funds were used. Further, Easterbrooke should be required to comply with the advertising requirements for ETCs established by the Commission in previous cases. Finally, any grant of ETC status should be conditioned on compliance with any standards for ETCs which are established as a result of the ongoing ETC task force in P.S.C. Case No. 03-1119-T-GI. (CAD Exhibit 2, p. 14).

On the stand, Mr. Gregg testified that, while he did not know how many customers Easterbrooke served, it reported 305 lines in the Mountain State study area and 1,563 lines in the St. Mary's study area. (Tr., pp. 90-91). Mr. Gregg noted that competitive ETCs accounted for $94.5 million of the Universal Service Fund support for the first quarter of 2004, representing 10.5% of the high cost fund support and 6% of the overall Universal Service Fund, which includes schools, libraries, health care and low income support. However, the support paid to competitive ETCs is the fastest-growing portion of the high cost fund. It is higher than the high cost model mechanism and is approaching the level paid out under local switching support and long term support. Annualized, the $94.5 million paid to competitive ETCs will amount to almost $400 million per year. (Tr., pp. 91-92, 128). He acknowledged that all of the arguments raised about how much is paid to rural carriers is entirely correct; rural carriers currently get the largest amount, well over $1 billion out of the $3.2 billion in high cost funds. (Tr., p. 92).

In making his recommendation, Mr. Gregg looked at the total amount of support in the various Frontier study areas compared to what customers are currently paying. The amount of support Frontier receives in the Mountain State study area equals or exceeds the amount of revenue that it gets from its own customers on a per line basis. Based on that, it appears to Mr. Gregg that Frontier's Mountain State study area is an area where the costs are so high and the amount of support necessary to maintain universal service is already so high that it makes no economic sense to have an additional subsidized carrier. This doesn't mean that there can't be competitive entry in the Mountain State study area. The question is how many competitive ETCs will be subsidized with public money. According to Mr. Gregg, as long as the nine supported services are provided in an area at comparable prices, the promise of universal service has been fulfilled and one should ask very hard questions before going forward and spending additional public funds to subsidize ETCs in very high cost areas. (Tr., pp. 93-94).

Mr. Gregg pointed out that one ETC has already been approved for all three Frontier study areas, FiberNet. To his knowledge, however, FiberNet is not providing service to any of the wire centers in the Mountain State study area. Mr. Gregg doesn't think there should be any additional ETCs designated in the Mountain State study area at this time, although this could change down the road when perhaps there is a different cost structure and more efficient providers. (Tr., pp. 94-95).

With respect to the suggestion that Easterbrooke be required to serve all of any wire center even if it is partially outside of its licensed wireless service area, Mr. Gregg believes that Easterbrooke has two options if it objects to that condition. It can either choose not to seek ETC designation in those wire centers, which is what AllTel did in West Virginia and elsewhere, or it can seek authority to serve those areas. Mr. Gregg noted that ETC status is technology neutral. It doesn't require that the nine supported services be provided using any particular technology. Easterbrooke can use a combination of technologies in those wire centers, probably a combination of wireless and resale of landline service. (Tr., pp. 95-96). Mr. Gregg believes that his proposal is reasonable to avoid confusion among customers as to where an ETC will undertake its ETC obligations and where it will provide service. According to Mr. Gregg, Easterbrooke needs to make a choice, either it must serve all of the wire centers or seek ETC status in those wire centers which extend beyond its boundaries. (Tr., pp. 96-97). Mr. Gregg believes that Easterbrooke should not obtain ETC status if it is not willing to serve all of the customers in a wire center. (Tr., pp. 97-98).

Mr. Gregg acknowledged that the Universal Service Fund still supports all lines of all ETCs. (Tr., p. 98). Mr. Gregg acknowledged that the universal service mechanism collects funds from a broad range of customers in order to help support certain categories of services that have been singled out for subsidy, that is, areas that are costly to serve, such as rural, insular or high cost areas, where, but for federal subsidies, there probably wouldn't be telephone service. (Tr., pp. 99-100). Another area is support for low-income households that couldn't afford telephone service without a subsidy. A third category is rural health care, meaning subsidized services for health care providers in rural areas, including access to advanced services. The fourth category of supported service consists of subsidies to schools and libraries to give them access to advanced services at cheaper rates than they would otherwise have to pay. The total paid out under all of the Federal Universal Service Funds in 2003 was $6.2 billion. However, the funding base for the Universal Service Fund has been declining or stagnant in recent years at approximately $77 to $80 million annually. The problem is that assessments for the Universal Service Fund are made only against interstate and international revenues. The total revenue base of over $230 million per year hasn't been tapped, although there are discussions in Congress that would allow USF assessments against intrastate revenues. (Tr., pp. 99-100). Obtaining ETC designation allows a company to draw funds from the high cost fund and the low-income fund. ETC designation also carries with it serious obligations for the designee. (Tr., pp. 100-101).

In Mr. Gregg's opinion, the USF mechanism was not intended to foster or create competition in rural areas or any other areas. The twin pillars of the Telecommunications Act of 1996 were competition and universal service. If all that Congress cared about was competition, you could potentially leave rural areas behind, causing rates to be unaffordable. (Tr., p. 101). He acknowledged that the Universal Service Fund is funding multiple networks and multiple ETCs in certain areas today. He doesn't believe that that is the purpose of the fund and it is currently being looked at by the Joint Board and the FCC. He agreed that there is nothing in the Act to suggest that Universal Service Fund should be used to ensure that customers have both wireline and wireless service. He does not think that the purpose of Section 254 is to promote competition, although the end result may be that multiple networks are supported in certain areas. He believes that the purpose of Section 254 is to ensure that all customers in all areas of the nation, including those in insular, rural and high cost areas, have access to a certain basic level of telecommunication services at rates comparable to those that are paid in urban areas. However, simply because an urban area might have five wireless providers and three landline providers doesn't mean that every rural customer is entitled to that same level of service or the same number of networks. Nothing in Section 254 of the Act suggests that customers are entitled to or should expect support for one wireless and one landline network. (Tr., pp. 102-103). He believes that, if the nine supported services are available at comparable rates as in urban areas, the Universal Service mechanism has fulfilled its primary mission. (Tr., p. 103). He pointed out that one of the reasons for the different standard for designating ETCs in rural study areas was the concern about the impact of unfettered competition on the ability of the subsidized carriers to survive in the competitive environment. Therefore, the designation of additional ETCs is discretionary with the states for rural areas and can be made only after a positive finding that doing so is in the public interest. (Tr., p. 104). Mr. Gregg noted that limiting the number of ETCs in a rural area does not preclude competitors from entering that area and he noted that Easterbrooke has been serving the area at issue since 1990 without any subsidy. The only issue is whether Easterbrooke qualifies for the USF subsidies, in addition to the subsidies already being paid to Frontier for its existing network. (Tr., pp. 104-105).

Mr. Gregg reiterated that Frontier's Mountain State study area is so costly to serve that it simply doesn't make economic sense to designate another ETC in that area. The support per line in the St. Mary's study area is approximately $16.00 per line per month, while the level of support per line per month in the Mountain State study area is approximately $30.00, almost double the amount of the St. Mary's study area. Mr. Gregg believes that the relevant area of inquiry is the study area and not the wire center, because support is paid on a study area basis. The level of support for the St. Mary's area is low enough to support an additional ETC, whereas the Mountain State study area is simply too expensive. (Tr., pp. 112-113).

Mr. Gregg again reiterated his disagreement with Frontier's view that there should be no additional ETCs designated in any area that receives any high cost support, noting that non-rural study areas receive high cost support and the designation of additional ETCs is mandatory in those areas. He acknowledged that different people can disagree where the line should be drawn between granting additional ETCs and not granting additional ETCs. He reiterated his belief that a better policy is to require increased scrutiny as the level of support for the incumbent increases. Roughly half of the study areas receive more than $20.00 per line per month in support. They serve only 1.7% of the population and they get 44% of the high cost fund. (Tr., pp. 113-115).

Mr. Gregg acknowledged that each case has to be looked at individually. (Tr., pp. 115-116).

## DISCUSSION

Under the Telecommunications Act of 1996, designation as an ETC is essential in order for common carriers of telecommunications services to be eligible to receive federal universal service support pursuant to 47 U.S.C. §254. In order to be designated as an ETC, an applicant must: (1) be a common carrier; (2) offer the services supported by the federal universal service support mechanism under 47 U.S.C. §254(c), either using its own facilities or a combination of its own facilities and resale, throughout the designated service area; (3) advertise the availability of such services and the charges therefor, using media of general distribution. 47 U.S.C. §214(e)(1)(A)&(B); and (4) offer Link-Up and Lifeline services as part of its service offerings to low-income subscribers. See 47 C.F.R. §§54.405 and 54.411.

47 U.S.C. §214(e)(2) establishes the process for the designation of eligible telecommunications carriers:

> A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). <u>Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest</u>. (Emphasis added).

The nine (9) supported services which the ETC applicant must provide are: voice grade access to the public switched telephone network; local usage; dual-tone multi-frequency (DTMF) signal or its functional equivalent; single party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation for qualifying low-income customers. See, 47 C.F.R. §54.101(a). The applicant also must advertise the availability of these services throughout its service territory. If the incumbent local exchange carrier is a rural telephone company, the applicant seeking ETC status also must demonstrate that designating it as an ETC is in the public interest.

The Public Service Commission adopted general criteria for the advertising requirement in its Order of May 4, 2001, in Case No. 00-1656-T-PC, <u>Gateway Telecom, LLC, dba StratusWave Communications</u>, as follows:

1. The carrier must advertise in media targeted to the general residential market throughout its service area;

2. Such advertising should be placed in media substantially similar to the media in which the serving incumbent LEC advertises its services in the particular service area. This may mean newspaper or local magazine advertisements where the incumbent advertises its services in such publications, or use of broadcast media (radio or television) where the incumbent uses such media;

3. The carrier is required to maintain an Internet site where members of the public can obtain information regarding its services and rates; and

4. The carrier is required to advertise its services at least quarterly throughout the service areas for which it has been designated an ETC.

In this proceeding, the Joint Stipulation and Agreement for Partial Settlement resolves most of the issues regarding whether or not Easterbrooke provides the nine supported services. The parties to this proceeding have stipulated that Easterbrooke provides all of the supported services with the exception of access to the public switched telephone network, a stipulation to which Frontier would not agree. There also is no dispute that Easterbrooke advertises its services in a manner consistent with the Commission's decision in Gateway, supra. As a result of the Joint Stipulation and Agreement for Partial Settlement, there are two principal issues to be addressed in this case, whether or not Easterbrooke provides access to the public switched telephone network, one of the nine supported services which must be provided by an applicant for ETC designation, and whether the designation of Easterbrooke as an ETC in Frontier's study areas is in the public interest.

The FCC's regulations on the service area of an ETC are contained in 47 C.F.R. §54.207, as follows:

> (a) The term service area means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.
>
> (b) In the case of a service area served by a rural telephone company, service area means such company's "study area" unless and until the Commission [the FCC] and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company.
>
> (c) If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

## ACCESS TO THE PUBLIC SWITCHED TELEPHONE NETWORK

Frontier is asserting that Easterbrooke does not provide access to the public switched telephone network because Easterbrooke has not entered into an interconnection agreement with Frontier. Rather, Easterbrooke routes its telecommunications traffic through its existing T-1 facilities to access tandems operated by Verizon. All of the traffic between Frontier and Easterbrooke is transported and terminated in this way. (Easterbrooke Ex. 1, p. 3; Tr., pp. 28-30, 38-40). However, Easterbrooke and the CAD both pointed out that there is no federal or state requirement that Easterbrooke and Frontier have a direct interconnection for the purpose of transporting traffic. 47 C.F.R. §§54.101 defines the nine supported services. Voice grade access to the PSTN is defined as "a functionality that enables a user . . . to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call." Nothing in this definition requires direct connection between the providers. Neither Easterbrooke nor Frontier has any knowledge of any complaint that customers of either carrier are unable to make local calls to or receive calls from customers of the other carrier. (Tr., pp. 39, 137, 140).

After the hearing, Counsel for Frontier filed a letter with the Commission indicating that Frontier actually had opened in its switches the 642, 644 and 651 NXX codes used by Easterbrooke, but has not opened the 704 NXX code used by Easterbrooke and will not do so until Easterbrooke enters into an interconnection agreement with it. Easterbrooke noted in its reply brief that Easterbrooke has not yet implemented the 704 NXX code, so the fact that this code is not open in Frontier's switch would not affect customer traffic. It was also noted in both Easterbrooke's initial and reply briefs that, subsequent to the hearing, Frontier tendered an interconnection agreement to Easterbrooke, which Easterbrooke is in the process of reviewing. Now that Frontier has requested an interconnection agreement with Easterbrooke, Section 251 of the Act will require Easterbrooke to enter into such an agreement. As the testimony at hearing noted, if Easterbrooke and Frontier are unable to negotiate terms of a reasonable interconnection agreement, the matter can be brought before the Public Service Commission for arbitration.

In any event, it seems clear that Easterbrooke was not required to have a direct interconnection with Frontier, at least until Frontier requested that it enter into an interconnection agreement. The traffic between Easterbrooke's customers and Frontier's customers is obviously traveling and being terminated appropriately since neither carrier has received any complaints. There can be no legitimate question that Easterbrooke provides access to the public switched telephone network.

## PUBLIC INTEREST TEST

By far, this issue generated the bulk of the testimony and argument in this proceeding. Both Frontier and the CAD advocate a public interest test that looks not at the local area that is being served by the applicant for ETC status and the additional area that could be better served if it was granted ETC status, but, instead, at a broader analysis of the health and longevity of the high cost universal service fund itself. It is clear from recent decisions of the FCC that the growth in the universal service fund is an item to be considered; however, it is equally clear that the FCC has not adopted the rather broad public interest test relied upon by Frontier and the CAD. The FCC,[2] in its decisions on whether or not to designate applicants for ETC status, has relied upon a more local analysis of the public interest as advocated in this proceeding by Easterbrooke. See, for example, Virginia Cellular, LLC, Docket 96-45, FCC 03-338, (Rel. January 22, 2004), Paras. 28, 29 and 30; Highland Cellular, Inc., CC Docket 96-45, FCC 04-37, (Rel., April 24, 2004), Paras. 22-27. In this proceeding, the undersigned will follow the lead of the FCC and analyze the public interest of the territory covered by the application.

Easterbrooke's testimony indicated that, with ETC status, it will enhance its network through the operation of additional cell towers, provide customers with advanced services and the highest quality of service and provide competitive telecommunications services to rural West Virginia. Easterbrooke further asserts that, with USF funding, it will be able to greatly improve its service to rural or remote areas and reduce or eliminate "dead spots" in its current coverage due to terrain or prorogation characteristics, by constructing new cells and installing repeaters and extenders, as well as by incorporating emerging and innovative technologies. (See, Easterbrooke Exhibit 1, pp. 4-5).

Additionally, cellular providers in this area generally, and Easterbrooke specifically, are required to address the unique engineering and financial challenges posed by the existence of the National Radio Quiet Zone in this service territory, an issue which does not affect wireline carriers. The Quiet Zone encompasses an area of approximately 13,000 square miles and was designed to minimize possible harmful interference with the National Radio Astronomy Observatory at Green Bank, West Virginia, and the Naval Radio Research Observatory at Sugar Grove, West Virginia. There are significant restrictions and limitations upon construction and operation of new or modified radio transmission sites in the Quiet Zone, and, as a result of these restrictions and limitations, there is dramatically reduced effective radiated power for any sites in that Quiet Zone that are approved for transmission. Restrictions also impact location and antenna configuration. As a result, CMRS carriers affected by the Quiet Zone have significantly higher coverage costs than they otherwise would experience, with significantly reduced signal strength, resulting in reduced service capabilities. (Easterbrooke Exhibit 1, pp. 5-6). Easterbrooke has taken what steps it can take before the FCC in order to expand construction within the Quiet Zone, but the additional infrastructure that Easterbrooke can install with USF funding will allow it to overcome those Quiet Zone difficulties to some degree.

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[2]In the event that the State Commission does not have authority to designate eligible telecommunications carriers, applicants for ETC status may petition the FCC for designation, upon a showing that the state Commission who would normally have jurisdiction over the territory does not have authority to make the designation. 47 U.S.C. §214(A)(2); 47 CFR Section 54.201(a).

Further, Easterbrooke's service territory, WV RSA 5, has a low population density, extremely challenging terrain and low incomes and high poverty levels, which render it more difficult for Easterbrooke to provide broad coverage and reliable service. (Easterbrooke Exhibit 1, pp. 4&7). According to Easterbrooke, it will be able to construct new facilities in the rural high-cost areas of WV RSA 5 and improve service in those areas where signal strength is weak due to topography. Improved telecommunications infrastructure will facilitate commercial and residential development in sparsely populated areas and spur economic development. (Easterbrooke Exhibit 1, p. 7).

A comparison of Easterbrooke's service offerings and rate plans with Frontier's tariffs on file with the Commission indicate that Easterbrooke will be able to offer customers in WV RSA 5 with a larger local calling area than Frontier offers under its rate plans, since Easterbrooke's home calling area under all of its plans includes the eight counties in the WV RSA 5, Braxton, Clay, Nicholas, Pocahontas, Randolph, Tucker, Upshur and Webster. Calls placed from within the home area to anywhere in West Virginia incur no additional toll or long distance charges, although off-network roaming charges can apply. (Easterbrooke Exhibit 1, pp. 9-10; Frontier's tariff on file with the Commission). Easterbrooke witness McGaw also noted that Easterbrooke can offer quality affordable service to consumers in areas where landline service is unavailable. (Easterbrooke Exhibit 1, p. 12). Mr. McGaw noted that the availability of a portable high quality wireless service is especially important for health and safety in rural areas where wireline service may be physically unavailable. (Easterbrooke Exhibit 1, p. 12).

Easterbrooke witness Wood made the point that the existence of competitive options for telecommunications service, particularly the availability of wireless service, is important for rural economic development and that, when making decisions on whether or not to locate their facilities in a given area, businesses consider the availability of reliable voice services, data services and wireless services with sufficient coverage. He argued that rural areas require these services to be able to compete with urban and suburban areas to attract investment and jobs. (Easterbrooke Exhibit 2A, pp. 6-7). He also emphasized that reliable mobile communications have a level of importance for people who live in rural areas that people living in urban areas fail to appreciate. He noted that even the highest quality wireline service is no substitute for mobile service with broad geographic coverage, because the wireline service often physically is not there when it is needed. (Easterbrooke Exhibit 2A, p. 7).

In the past, the Public Service Commission, on the basis of the language of the Telecommunications Act of 1996 and earlier FCC decisions, was able to conclude that the public interest test for an ETC applicant in an RTC territory was met simply on the basis of increased choices in technology, services and prices for consumers. (See, Fibernet, LLC, Case No. 01-0488-T-PC). While these factors may still be considered, they can no longer be the exclusive basis upon which an ETC designation in an RTC territory can be made.

In its most recent pronouncement on the subject, in its Highland Cellular decision (Rel. April 12, 2004), the FCC noted that, in determining whether or not the designation of an applicant as an ETC will serve the public interest, it must consider whether the benefit of an additional ETC in the subject wire centers outweighs any potential harms. The FCC further noted that this balancing of benefits and costs is a fact-specific exercise. Among other elements, the FCC weighed the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offerings, any commitments made regarding the quality of telephone service and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable timeframe. (Highland Cellular, Par. 22).

In the Highland Cellular proceeding, the FCC noted that Highland Cellular's service offerings would provide benefits to customers in situations where they do not have access to a wireline telephone and that the mobility of Highland Cellular's wireless service would provide other benefits to customers. The FCC noted that the mobility of telecommunications assists consumers in rural areas who must drive significant distances to places of employment, stores, schools and other critical locations. Further, the availability of a wireless service offering provides access to emergency services that can "mitigate the unique risk of geographic isolation associated with living in rural communities." (Highland Cellular, Para. 23). The FCC also noted that, because the cellular ETC applicant's local calling area was larger than those of the ILECs with which it would compete, its customers will be subject to fewer toll charges. The FCC noted that the applicant had given assurances that it would alleviate "dropped calls" by using universal service support to build new towers and facilities to offer better coverage. (Highland Cellular, Para. 24). All of the factors considered important by the FCC in the Highland Cellular opinion are supported by Easterbrooke's testimony in this proceeding. It is significant to the undersigned that neither Frontier nor the CAD even bothered to attempt to rebut these portions of Easterbrooke's testimony; yet, they are among the most critical pieces of testimony in the record.

The FCC's analysis of the impact of the ETC designation on the Universal Service Fund was also interesting, and significantly different from the ones advocated by either the CAD or Frontier. The FCC acknowledged the concerns regarding growth in the Universal Service Fund and the ever-increasing amounts paid out in high cost support to competitive ETCs. The FCC also referenced the on-going examination by it and the Joint Board of the FCC's rules relating to high cost universal service support in competitive areas.[3] However, the specific analysis conducted

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[3]A word should be said about the Recommended Decision of the Federal-State Joint Board on Universal Service released on February 27, 2004. That Recommended Decision is simply the recommendations of the Joint Board to the FCC and carries no actual precedential value. In those recommendations, the Joint Board makes recommendations to address the increasing level of payments to competitive ETCs from the high cost fund and asks the FCC to consider several issues. That Recommended Decision was issued three days after the Highland Cellular opinion was adopted. However, given that Highland Cellular wasn't released until April 12, 2004, it would appear that the FCC may have been considering whether to

by the FCC on the impact of an additional ETC on the Universal Service Fund was not based on the overall growth in the fund or the level by which payouts to competitive ETCs have grown in the past few years as advocated by Frontier. Further, the FCC did not engage in the study area/ loop support analysis recommended by the CAD. Instead, the FCC attempted to estimate the impact on the Universal Service Fund of granting the individual application and, obviously, concluded that the impact would not be significant. (See, Highland Cellular, Para. 25 and fn. 73).

The type of information utilized by the FCC in this particular analysis was not provided by any party in this case, since Highland Cellular, and the Virginia Cellular case previously referenced, were issued subsequent to the hearing in this matter and the parties did not have access to the FCC's most recent thoughts on the issue in preparing their prefiled testimony or in the testimony and cross-examination engaged in at the hearing. However, a review of some of the more generally available information from the Universal Service Administrative Company regarding high cost support can be helpful. For the first quarter of 2004, the USAC is projecting total high cost support on an annualized basis of $3.5 billion dollars. Of that amount, West Virginia carriers would receive approximately $82.2 million or approximately 2.3% of the total projected high cost support to be paid out in 2004. (See, Appendix HC02, 1Q 2004, Universal Service Administrative Company). That same Appendix indicates that, for 2004, it is projected that West Virginia will receive the 19th highest level of support from the fund. The largest amount will be paid out to Texas, over $211 million dollars. West Virginia is projected to receive approximately $2 ½ million less than the amount paid out to a sister state, Virginia, the state in which both Highland Cellular and Virginia Cellular were designated as ETCs by the FCC in 2004.

Based on the information in the record on the tangible benefits to be gained by the customers in WV RSA 5 from Easterbrooke's ETC designation, and the obvious lack of substantive impact of the designation of Easterbrooke as an ETC on the overall Universal Service Fund, the undersigned concludes that Easterbrooke has met its public interest test with respect not only to the issue of impact on the Universal Service Fund, but also with respect to the more fact-specific analysis regarding the service territory for which it is seeking ETC designation.

In the Highland Cellular proceeding, as in the Virginia Cellular proceeding, the FCC noted that each applicant had agreed to comply with the Cellular Telecommunications Industry Association (CTIA) Consumer Code for Wireless Service, which sets out certain principals, disclosures and practices for the provision of wireless service. Under that Consumer Code, wireless carriers agree to disclose rates and terms of service to customers; provide maps showing where service is generally available;

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modify its opinion at all to incorporate any reference to the Joint Board's recommendations. However, the opinion that was released on April 12, 2004, makes no reference to the Joint Board's Recommended Decision and simply uses the same general language concerning growth in the Fund that was included in the Virginia Cellular opinion released on January 22, 2004.

provide contract terms to customers and confirm changes in service; allow a trial period for new service; provide specific disclosures in advertising; separately identify carrier charges from taxes on billing statements; provide customers the right to terminate service for changes to contract terms; provide ready access to customer service; promptly respond to customer inquiries and complaints received from government agencies; and abide by policies for the protection of consumer privacy. The CTIA Consumer Code was not mentioned by any party in this proceeding, but the undersigned believes that it represents a fairly reasonable level of service and commitment to a cellular telephone company's customers. Accordingly, the undersigned believes that it is reasonable to impose a requirement upon a wireless applicant for ETC designation in West Virginia that it agree to comply with the provisions of the CTIA Consumer Code. Therefore, that requirement will be imposed upon Easterbrooke in this proceeding.

With that requirement, the undersigned concludes that, since Easterbrooke is providing the nine services supported by the Universal Service Fund; has committed to comply with the advertising requirements established by the Commission in Gateway; has agreed to comply with other potential restrictions and conditions based upon the West Virginia Public Service Commission's own Highland Cellular proceeding, pending before the Commission on exceptions, in Case No. 02-1465-T-PC; and has demonstrated that it is in the public interest to designate it as an ETC, it is reasonable to designate Easterbrooke Cellular Corporation as an eligible telecommunications carrier within its service territory of WV RSA 5, with certain amendments and conditions described below.

ETC Service Area For Easterbrooke

While not major issues in this proceeding, there are some small issues relating to the exact contour of the service area to be included in Easterbrooke's ETC designation. As noted previously in this Discussion section, generally speaking, the service area for an ETC in RTC territory is the RTC's entire study area, as previously defined, unless both the state and the FCC approve a different service area pursuant to federal regulations. (See, 47 U.S.C. §214(e)(5); 47 C.F.R. §54.207).

Easterbrooke requested ETC designation for its entire service territory of WV RSA 5, encompassing eight counties in West Virginia. Easterbrooke had previously been designated as an ETC for the portion of its licensed territory served by Verizon, a non-rural telecommunications carrier. The instant petition covers the remainder of its licensed territory in West Virginia within portions of Frontier's Mountain State and St. Mary's study areas. However, the boundaries of the specific Frontier wire centers covered by Easterbrooke's petition in this case do not conform precisely to the boundary of WV RSA 5 in two instances. As noted in CAD Exhibits 2 and 2A, Exhibit BJG-1, Frontier's Walkersville wire center serves a portion of northern Braxton County where Easterbrooke is licensed, but mainly serves southern Lewis County where Easterbrooke does not have a license, while the Thomas and Davis wire centers in Tucker County serve the western portion of Grant County, which also is not included in WV RSA 5.

The CAD has recommended that the Commission specify that Easterbrooke is granted ETC status within the entire boundaries of designated wire centers, whether the boundaries of those wire centers extend beyond the boundary within which Easterbrooke is licensed to provide wireless service. The CAD noted in its Initial Brief that Easterbrooke's wireless signal extends beyond the boundaries of the eight counties within which it is licensed to provide wireless service as verified by Exhibit B of Easterbrooke Exhibit 1, the coverage map attached to Mr. McGaw's testimony. The CAD also noted that, in order to provide the supported services, Easterbrooke is not limited to providing wireless service, but may provide service through the resale of wireline or other wireless services. In order to accomplish the goal of providing service to the entire wire centers for which it is receiving ETC designation, the CAD is recommending that the Commission direct Easterbrooke to either obtain a certificate of convenience and necessity to provide telecommunications service in those portions of the wire centers in question that lie beyond its licensed boundaries or withdraw its petition with respect to those particular wire centers, as AllTel did previously before the Commission. (See, Tr., pp. 95-98 and CAD Initial Brief, p. 12).

Initially, the undersigned had grave reservations regarding this aspect of the CAD recommendation, given that the boundaries of the wireless service territories were determined at the federal level. Further, in previous decisions, the FCC had not required wireless ETC applicants to serve outside of their licensed service territories. (See, for example RCC Holdings ETC Designation Order, CC Docket No. 96-45, DA 02-3181, (rel. November 27, 2002)). However, in the Virginia Cellular Memorandum Opinion and Order released on January 22, 2004, and the Highland Cellular Memorandum Opinion and Order released on April 12, 2004, the FCC appeared to modify its position on this issue. In Virginia Cellular, the FCC spoke approvingly of Virginia Cellular's own amendment to its petition, which provided that, although the boundaries of its CMRS licensed service area in Virginia excluded a small part of the Williamsville wire center in the study area of MGW, Virginia Cellular had committed to offer service to customers in the entirety of the Williamsville wire center through a combination of its own facilities and the resale of either wireless or wireline services. (See, Para. 37).

In Highland Cellular, the FCC went the extra step and concluded that making an ETC designation for a portion of an RTC's wire center is inconsistent with the public interest. Particularly, the FCC concluded that, prior to designating an additional ETC in an RTC service area, the competitor must commit to provide the supported services to customers throughout a minimum geographic area. The FCC concluded that a rural telephone company's wire center is an appropriate minimum geographic area for ETC designation. (See, Highland Cellular, Memorandum Opinion and Order, CC Docket No. 96-47, FCC 04-37, (rel. April 12, 2004)).

It is true that, in Highland Cellular, the FCC stated that a wire center is an appropriate minimum geographic area because rural carrier wire centers typically correspond to county and/or town lines, which, in the instant proceeding, is exactly the opposite. The wire centers in question extend beyond county lines and do not appear to reflect specific community geographic boundaries. Nevertheless, the undersigned concludes that the FCC reasoning is still appropriate for this proceeding, particularly when looked out in conjunction with the CAD's arguments for requiring that the competitive carrier commit to providing service throughout a rural carrier's wire center, such as the avoidance of administrative and service-related problems that could occur if Easterbrooke were designated as an ETC in less than an entire wire center.

In the Highland Cellular proceeding, the FCC noted that Highland Cellular had stated in that case that, should the FCC impose a requirement that competitive ETCs serve complete rural telephone company wire centers, it would not seek designation in the specific wire center at issue. In the instant proceeding, Easterbrooke will be given the option of either withdrawing the Thomas, Davis and Walkersville wire centers from its requested ETC designated territory or obtaining a certificate of convenience and necessity from the Commission to serve the specific portions of Lewis County and Grant County for which it does not have authority at this time. Given the very specific location of the territory in question, the undersigned would not expect that Easterbrooke would be required to fulfill the statewide publication requirement usually imposed upon applications for telecommunications certificates of convenience and necessity, but, instead, would be required to publish notice of its application in only Lewis and Grant Counties. In any event, Easterbrooke will be required to serve either all of the Walkersville, Thomas and Davis wire centers or be granted ETC designation in no part of them.

Also with respect to Easterbrooke's service area for ETC purposes, Frontier has argued that allowing Easterbrooke to serve anything less than the entirety of the St. Mary's and Mountain State study areas amounts to allowing Easterbrooke to cream skim Frontier's service territory. The FCC has previously concluded that, when a CMRS licensed cellular provider seeks ETC designation for the entirety of its licensed service area, there can be a presumption that it is not attempting to cream skim, because it is attempting to obtain ETC designation for all points in the service territory which it has. Further, the FCC has concluded that, when a rural telephone company has filed a disaggregation plan with the FCC, so that its high-cost support is targeted principally to its high-cost wire centers, as has been done by Frontier, concerns about cream skimming are significantly minimized and reduced. (See, i.e., Virginia Cellular, Para. 32, and Highland Cellular, Para. 26. See also, RCC Holdings, Para. 31).

The FCC's cream skimming analysis involves an assessment of population density and whether or not the wire center is high cost or low cost. With respect to the wire centers in the St. Mary's study area, Easterbrooke is seeking ETC designation in two low-cost wire centers, five medium-cost wire centers and two high-cost wire centers, while, in the Mountain State study area, Easterbrooke is seeking designation in six medium-cost wire centers and three high-cost wire centers. These wire centers are all contiguous and all make up WV RSA 5. (Frontier Exhibit 2, attached Exhibit 3; CAD Exhibit 2, Exhibit BJG-1). The undersigned concludes that Easterbrooke is not attempting to cream skim Frontier's service territory and that granting ETC designation in the specified wire centers will not permit cream skimming by Easterbrooke, since it is obligated to serve all areas and all customers within its designation.

Frontier also argued that Easterbrooke should be required to serve all wire centers within the Mountain State and St. Mary's study areas. However, the FCC has concluded that requiring a carrier to serve a non-contiguous service area as a prerequisite of eligibility might impose a serious barrier to entry, particularly to wireless carriers. (See, Universal Service Order, 12 FCC Rcd 8882, Para. 190). Additionally, in the Virginia Cellular Memorandum Opinion and Order, the FCC declined to require Virginia Cellular to serve other non-contiguous wire centers in the study areas for which it was receiving ETC designation. (See, Virginia Cellular, Para. 38).

It should also be noted that, to a certain extent, both Frontier and the CAD in this case have attempted to elevate the boundaries of a study area to some sort of mystical importance. As Mr. Gregg explained in his testimony, the study areas simply reflect the service territories of the previous holders of Frontier's certificated service territory in West Virginia, with the Bluefield study area representing the territories previously served and certificated for General Telephone Company of the Southeast; the Mountain State study area reflecting the areas previously served by AllTel; and the St. Mary's study area reflecting the service territory previously held by Contel. Before Contel and AllTel, there were any number of smaller telecommunications companies in West Virginia whose service territories were slowly acquired and combined by different providers of service, such as Mountain State Telephone Company, Preston Telephone Company, Telephone Utilities of West Virginia, Tygart Valley Telephone Company and West Virginia Telephone Company. While it is true that universal service support is flowed through on a study area basis, given the actual meaning of what study areas are and how they were derived, and further given Frontier's disaggregation plan, which targets its universal service support to higher-cost exchanges and away from lower-cost exchanges within the study areas, the undersigned is not convinced that any study area analysis is really appropriate, at least where the study areas are large and non-contiguous.

The undersigned is particularly disturbed by the CAD's public interest analysis regarding per line support by study area as a means for determining whether or not additional ETC designations should be granted in RTC study areas. Because the Mountain State study area receives $37.76 per line in monthly high-cost support, and because that monthly amount per line was significantly in excess of either the Verizon or Frontier average residential rate or the national average residential rate, the CAD concluded that the Mountain State study area was so costly to serve that it could not support an additional ETC designation. The CAD's analysis completely ignored the fact that Frontier disaggregated its universal service support so that the amount of per line support on a study area average is of relatively little significance or importance in making substantive determinations on ETC petitions involving any of Frontier's study areas. The peculiarities of the CAD's argument can be fully appreciated when comparing the CAD's recommendation with respect to Easterbrooke's petition in Frontier's Mountain State study area to its recommendation on Hardy Telephone Company's ETC petition in the Moorefield Exchange in Frontier's Bluefield study area, in Case No. 03-

0305-T-PC, which decision is being issued contemporaneously with this decision. The high cost support per line for the Moorefield Exchange is $37.01, very close to the Mountain State study area monthly high cost support level. However, because the Bluefield study area as a whole only receives $11.97 per line per month in support, the CAD recommended that Hardy be granted ETC designation in the Moorefield Exchange regardless of the actual level of high-cost support received by the Moorefield Exchange. It should be noted that the Bluefield study area encompasses wire centers from the very southern part of the state along the Virginia/West Virginia border in Mercer County, and wire centers in Jefferson County at the extreme tip of the eastern panhandle, which are Frontier's most densely populated exchanges. Given the disaggregation of Frontier's USF support, the CAD's study area analysis really makes no sense. Further, given the conclusion of the FCC that it is the overall impact of the individual ETC petition on the Universal Service Fund that it will look at, at least in the foreseeable future, the undersigned is of the opinion that the CAD's study area analysis is misplaced.

Finally, the undersigned believes that there are certain policy issues relating specifically to the regulation provided by the Public Service Commission of West Virginia under the statutory scheme set forth in Chapter 24 of the West Virginia Code which no party to this proceeding has addressed. Under West Virginia Code §24-2-11(a), no public utility, person or corporation may begin the construction of any plant, equipment, property or facility for furnishing any of the services under the jurisdiction of the Public Service Commission nor apply for nor obtain any franchise, license or permit from any municipality or other governmental agency unless and until the Public Service Commission finds that the public convenience and necessity require the proposed service, construction, etc. The certificates granted to Frontier, Hardy and any other telecommunications provider in the State of West Virginia, whether they are wireless carriers or wireline carriers, interexchange carriers or CLECs, are exactly the same and the Commission had to make exactly the same finding of public convenience and necessity in order to grant them, whether or not those findings are explicitly stated in the orders. Given this similarity of certificates, the undersigned finds it discomfiting to be expected to pick and choose among carriers whose certificates have equal standing and whose services the Public Service Commission has already concluded are required by the public convenience and necessity. Denial of ETC designation to any ETC applicant in West Virginia means that the Public Service Commission is automatically placing that carrier at a financial and competitive disadvantage relative to the incumbent local exchange carrier and, possibly, previously granted ETC designees, by denying subsequent ETC applicants the same access to Universal Service Funding support as it granted to prior ETC designees or the incumbent providers. Once the Public Service Commission has concluded that the public convenience and necessity require a particular service, the undersigned is hard-pressed to understand under what legal basis under Chapter 24 of the West Virginia Code the Commission then makes an affirmative decision to discriminate between those providers by denying access to subsidy funds to some, while granting it to others.

## FINDINGS OF FACT

1. Easterbrooke Cellular Corporation, doing business as Cellular One, has requested that the Public Service Commission designate it as an eligible telecommunications carrier, pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended, in order for Easterbrooke to receive support from the Federal Universal Service Fund in those areas of Easterbrooke's service territory served by Citizens Telecommunications Company of West Virginia, doing business as Frontier Communications of West Virginia, a rural telephone company. (See, CAD Exhibit 1).

2. In order to be designated as eligible telecommunications carrier, an applicant must be a common carrier; offer the nine services supported by the Federal Universal Service Support mechanism under 47 U.S.C. §254(c), either using its own facilities or a combination of its own facilities and resale, throughout the designated service area; advertise the availability of such services and the charges therefor, using media of general distribution; and offer Link-Up and Lifeline services (known as Tel-Assistance services in West Virginia) as part of its service offers to low-income subscribers. (See, 47 U.S.C. §214(e)(1)(A)(B); 47 C.F.R. §§54.405 and 54.411).

3. The parties to this proceeding have stipulated that Easterbrooke is a common carrier; provides eight of the nine supported services; advertises its services in media of general distribution throughout its service territory; and will offer Lifeline and Link-Up service upon being designated as an ETC. (Joint Exhibit 1).

4. The parties also agreed to various other conditions in the Joint Stipulation and Agreement for Partial Settlement, some of which are self-implementing and some of which are dependent upon the Commission's final, non-reviewable decision in Case No. 02-1453-T-PC, Highland Cellular, Inc., currently pending before the Commission on exceptions. (See, Joint Exhibit 1).

5. Because of Frontier's objection, the parties did not stipulate that Easterbrooke provides access to the public switched network. (Joint Exhibit 1).

6. Easterbrooke is the original FCC Frequency Block A Cellular Licensee for WV RSA 5, comprised of Braxton, Clay, Nicholas, Webster, Pocahontas, Randolph, Upshur and Tucker Counties. Easterbrooke has constructed 39 cellular towers and will continue to add more sites as business conditions warrant. All of Easterbrooke's cellular sites are connected by its existing T-1 lines and microwave links to Easterbrooke's switch in Elkins, West Virginia, which, in turn, is connected to the public switched telephone network pursuant to Easterbrooke's interconnection agreement with Verizon. (Easterbrooke Exhibit 1, p. 3).

7. Frontier is a local exchange carrier providing service to customers in 34 of West Virginia's 55 counties. It has three designated study areas, Bluefield, St. Marys and Mountain State. Frontier also is a rural telephone company in each of those study areas and has filed a Universal Service Fund disaggregation plan for each study area, which simply means that high-cost support is targeted away from low-cost wire

centers and directed to high-cost wire centers. Frontier is the incumbent local exchange carrier and carrier of last resort in its three study areas. It has been designated as an ETC and receives Universal Service Funds in all three of its study areas. (Frontier Exhibit 2, pp. 4-5).

8. Easterbrooke routes its telecommunications traffic through its existing T-1 facilities to access tandems operated by Verizon. All traffic between Frontier and Easterbrooke is transported and terminated in this way. Neither Easterbrooke nor Frontier has any knowledge of any complaint that customers of either carrier are unable to make local calls to or receive calls from customers of the other carrier. (Easterbrooke Exhibit 1, p. 3; Tr., pp. 28-30, 38-40, 137 and 140).

9. There is no federal or state requirement that Easterbrooke and Frontier have a direct interconnection for the purpose of transporting traffic, in the absence of a request by Frontier that Easterbrooke negotiate an interconnection agreement with it. (See, 47 U.F.C. §251; 47 C.F.R. §54.101).

10. Subsequent to the hearing, Frontier filed a letter with the Commission indicating that certain NXX codes used by Easterbrooke have been opened by Frontier in its switches, although one NXX code, not currently used by Easterbrooke, has not been opened and will not be opened unless Easterbrooke enters into an interconnection agreement with Frontier. Also subsequent to the hearing, Frontier actually tendered a proposed interconnection agreement to Easterbrooke, which Easterbrooke was reviewing at the time of briefing in this matter. (See, Frontier letter filed February 24, 2004; Easterbrooke Initial Brief, p. 6).

11. In addition to the requirements which all ETC applicants must meet under 47 U.S.C. §214(e), applicants for ETC designation in rural telephone company service areas must also demonstrate that their designation as an ETC in such an area is in the public interest. (47 U.S.C. §214(e)(2)).

12. In making its own determinations on whether or not to designate additional ETCs in RTC study areas, the Federal Communications Commission has determined that the public interest determination is a fact-specific exercise, in which it must weigh the benefits of increased competitive choice, the impact of the designation on the Universal Service Fund, the unique advantages and disadvantages of the competitor's service offerings, any commitments made regarding the quality of telephone service and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. (See, Highland Cellular, Memorandum Opinion and Order, Docket 96-45, FCC 04-37, (Rel., April 24, 2004); Virginia Cellular, LLC, Memorandum Opinion and Order, Docket 96-45, FCC 03-338, (Rel., January 22, 2004)).

13. If Easterbrooke is granted ETC designation, it is committed to enhancing its network through the operation of additional cell towers, providing customers with advanced services and a higher quality of service and providing competitive telecommunications services to rural West Virginia. Easterbrooke also asserted that, with the USF funding, it will be able to greatly improve its service to rural or remote areas and

reduce or eliminate "dead spots" in its current coverage due to terrain or propogation characteristics, by constructing new cells and installing repeaters and extenders, as well by incorporating emerging and innovating technologies. (Easterbrooke Exhibit 1, pp. 4-5).

14. Cellular providers in the eastern portion of West Virginia and, particularly, Easterbrooke in WV RSA 5 are required to address the unique engineering and financial challenges posed by the existence of the National Radio Quite Zone in their service territories, an issue which does not affect wireline carriers. The Quite Zone encompasses an area of approximately 13,000 square miles and was designed to minimize possible harmful interference with the National Radio Astronomy Observatory at Green Bank, West Virginia, and the Naval Radio Research Observatory at Sugar Grove, West Virginia. (Easterbrooke Exhibit 1, p. 5).

15. Significant restrictions and limitations upon construction and operation of new or modified radio transmission sites are imposed in the Quite Zone, which dramatically reduce effective radiated power for any sites in the Quite Zone that are approved for transmission. Restrictions also impact location and antenna configuration. As a result, CRMS carriers affected by the Quite Zone have significantly higher coverage costs than they otherwise would experience, with significantly reduced signal strength, resulting in reduced service capabilities. (Easterbrooke Exhibit 1, pp. 5-6).

16. Easterbrooke has taken all of the steps it can before the Federal Communications Commission in order to expand construction within the Quite Zone, but the additional infrastructure that Easterbrooke can install with USF funding will allow it to overcome the Quite Zone difficulties, to some degree. (Easterbrooke Exhibit 1, pp. 6-7).

17. Easterbrooke's service territory, WV RSA 5, has a low population density, extremely challenging terrain and low-incomes and high poverty levels, which render it more difficult for Easterbrooke to provide broad coverage and reliable service. USF funding will enable Easterbrooke to construct new facilities in the rural high-cost areas of WV RSA 5 and improve service in those areas where signal strength is weak due to topography. Improved telecommunications infrastructure will also facilitate commercial and residential development in sparsely populated areas and spur economic development. (Easterbrooke Exhibit 1, p. 7).

18. Easterbrooke will be able to offer customers in WV RSA 5 a larger calling area and the possibility of lower toll charges than Frontier is able to offer under its rate plans, since Easterbrooke's home calling area under all of its rate plans includes all eight counties in WV RSA 5. Calls placed from within the eight-county home area to anywhere in West Virginia incur no additional toll or long distance charges, although off-network roaming charges can apply. (Easterbrooke Exhibit 1, pp. 9-10).

19. Easterbrooke can offer quality affordable cellular service to customers in areas where landline service is unavailable. The availability of a high-quality wireless service is especially important for health and safety reasons in rural areas where wireline service may be physically unavailable. (Easterbrooke Exhibit 1, p. 12).

20. The existence of competitive options for telecommunication service, particularly the availability of wireless service, is important for rural economic development. When making decisions on whether or not to locate their facilities in a given area, businesses consider the availability of reliable voice services, data services and wireless services with sufficient coverage. Rural areas require these services in order to be able to compete with urban and suburban areas in attracting investment and jobs. (Easterbrooke Exhibit 2A, pp. 6-7).

21. Reliable mobile communications have a high level of importance for people who live in rural areas. The highest quality wireline service is no substitute for mobile services with broad geographic coverage, simply because the wireline service physically may not be there when it is needed, in a rural area. (Easterbrooke Exhibit 2A, p. 7).

22. In determining whether or not to grant additional ETC designations in RTC study areas, the FCC has noted that cellular service offerings will provide customers benefits in situations where they do not have access to a wireline telephone and that the mobility of wireless service provides other benefits to customers, and is of particular assistance to customers in rural areas who must drive significant distances to places of employment, stores, schools and other critical locations. The FCC has also determined that the availability of a wireless service offering provides access to emergency services that can "mitigate the unique risk of geographic isolation associated with living in rural communities". (See, Highland Cellular, paragraph 23).

23. In its determinations on whether or not to grant additional ETC designations in RTS study areas, the FCC has also noted that, because a cellular applicant's local calling area is larger then that of the incumbent local exchange carrier with which it will compete, its customers would be subject to fewer toll charges. Further, the FCC has considered it significant if an applicant has given assurances that it will alleviate dropped calls and "dead spots" by using Universal Service support to build new towers and facilities to offer better coverage. (See, Highland Cellular, paragraph 24).

24. Neither Frontier nor the CAD offered testimony to rebut any portion of Easterbrooke's testimony regarding the benefit its designation as an ETC would bring to the specific territory covered by this application, i.e., WV RSA 5. (See, record generally).

25. In its determination on whether or not to designate additional ETCs in RTC study areas, while the FCC has acknowledged that the impact of additional ETCs on the Universal Service Fund is a factor to be considered, when it considers that factor, the FCC looks at the impact of the specific ETC applicant on the overall Universal Service Fund, rather than a broader and more general policy analysis. (See, Highland Cellular, paragraph 25 and footnote 73; Virginia Cellular, paragraph 31 and footnote 96).

26. For the first quarter of 2004, the Universal Service Administrative Company is projecting total high-cost support on an annualized basis of $3.5 billion. Of that amount, West Virginia carriers are expected to receive approximately $82.2 million, or approximately 2.3% of

the total projected high-cost support to be paid out in 2004. (See, Appendix HC02, 1Q 2004, Universal Service Administrative Company).

27. For 2004, it is projected that West Virginia will receive the nineteenth highest level of support from the fund, and is projected to receive approximately $2.5 million less than the amount paid out to Virginia, the state in which both Highland Cellular and Virginia Cellular were designated as ETCs by the FCC in 2004. (See, Appendix HC02, 1Q 2004, Universal Service Administrative Company).

28. In its decision on whether or not to grant additional ETC designations in RTC territories for cellular companies, the FCC has placed great store upon each applicant's agreement to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures and practices for the provision of wireless service. (See, Highland Cellular, paragraph 43; Virginia Cellular, paragraph 30),

29. Generally speaking, the service area for a competitive ETC in RTC territory is the RTC's entire study area, unless and until the state commission and FCC approve a different service area pursuant to federal regulations. (See, 47 U.S.C. §214(e)(5); 47 C.F.R. §54.207).

30. The boundaries of Easterbrooke's licensed cellular service territory, WV RSA 5, do not conform precisely to the boundaries of the specific Frontier wire centers covered by Easterbrooke's petition in this case. Frontier's Walkersville wire center serves a portion of northern Braxton County where Easterbrooke is licensed, and which portion is included in Easterbrooke's petition in this case, but mainly serves southern Lewis County where Easterbrooke does not have a license. Frontier's Thomas and Davis wire centers in Tucker County serve the western portion of Grant County, which also is not included in WV RSA 5. (CAD Exhibits 2 and 2A, attached BJG-1; CAD Exhibit 2 and 2A, pp. 11-13).

31. In its 2004 determinations on whether or not to designate additional cellular ETCs in RTC service territories, the FCC has determined that the applicant for ETC designation must commit to provide the supported services to customers throughout a minimum geographic area, which the FCC has concluded should be the rural telephone company's wire center. (See, Highland Cellular, paragraph 33).

32. The FCC has previously concluded that, when a CMRS licensed cellular provider seeks ETC designation for the entirety of its licensed service territory, there can be a presumption that the applicant is not attempting to cream skim the rural telephone company's service territory, since the applicant is attempting to obtain ETC designation for all points in the service territory which it has. Further, the FCC has concluded that, when a rural telephone company has filed a disaggregation plan with the FCC, so that its high-cost support is targeted principally to its high-cost wire centers, as has been done by Frontier, concerns about cream skimming are significantly minimized and reduced. (See, Virginia Cellular, paragraph 32; Highland Cellular, paragraph 26; RCC Holdings, Inc., Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3181, (Rel. November 27, 2002), paragraph 31).

33. In its petition, Easterbrooke is seeking ETC designation in Frontier's St. Mary's study area in two low-cost wire centers, five medium-cost wire centers and two high-cost wire centers, while, in the Mountain State study area, Easterbrooke is seeking designation in six medium-cost wire centers and three high-cost wire centers. These wire centers are all contiguous and all make up WV RSA 5. (Frontier Exhibit 2, attached Exhibit 3; CAD Exhibit 2, Exhibit BGJ-1).

34. In making its determination on whether or not to grant additional ETC designations in an RTC service territory, the FCC has concluded that requiring a carrier to serve a non-contiguous service area as a prerequisite of ETC eligibility might impose a serious barrier to entry, particularly to wireless carriers. (See, Universal Service Order, 12 FCC Rcd. 8882, paragraph 190; Virginia Cellular, paragraph 38).

## CONCLUSIONS OF LAW

1. Given the Joint Stipulation and Agreement for Partial Settlement, coupled with the testimony of Easterbrooke witness McGaw regarding the technical aspects of Easterbrooke's operations, it is reasonable to conclude the Easterbrooke is a common carrier; offers eight of the nine supported services, i.e., local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitations for qualifying low-income customers. Easterbrooke has committed to make its supported services available throughout its designated service area and to advertise the availability of and charges for the supported services throughout its designated service territory.

2. It is reasonable to conclude that Easterbrooke offers or is capable of offering the first supported service, i.e., voice-grade access to the public switched telephone network, through its existing T-1 facilities which are interconnected with access tandems operated by Verizon.

3. Given the territory-specific evidence presented by Easterbrooke Exhibits McGaw and Wood regarding the specific benefits to be derived by consumers in WV RSA 5 from ETC designation for Easterbrooke as detailed in Findings of Fact 13 through 21, it is reasonable to conclude that granting ETC status to Easterbrooke is in the public interest of the consumers of telecommunications services in WV RSA 5.

4. Given the insubstantial impact of granting ETC status to Easterbrooke on the overall Universal Service Fund, it is reasonable to conclude that granting ETC status to Easterbrooke will not harm the Federal Universal Service mechanism and, therefore, the ETC designation for Easterbrooke meets the public interest test required for additional ETC designations in rural telephone company study areas.

5. It is reasonable to require Easterbrooke to comply with the Consumer Code for Wireless Service of the Cellular Telecommunications

Industry Association, as a condition of receiving ETC designation in the study areas of Frontier.

6. It is reasonable to designate Easterbrooke's service area for ETC purposes as the entirety of WV RSA 5, encompassing portions of Frontier's Mountain State and St. Marys study areas, as permitted under Section 214(e)(5) and 47 C.F.R. §54.207, with certain amendments regarding the partial wire centers included within the boundaries of WV RSA 5.

7. Given the FCC's decisions in 2004 in the Virginia Cellular and Highland Cellular opinions, it is reasonable to require Easterbrooke to agree to serve the entirety of any wire centers which are only partially located within WV RSA 5 by obtaining a certificate of convenience and necessity from the Public Service Commission to serve those areas or, in the alternative, to require it to withdraw its request for ETC designation in those partial wire centers. In this proceeding, the wire centers at issue are the Walkersville wire center, serving Braxton and Lewis Counties, and the Thomas and Davis wire centers, serving Tucker and Grant Counties. Within thirty (30) days of the date that this Order becomes final, Easterbrooke shall notify the Public Service Commission and the parties to this proceeding whether it will agree to serve the entirety of those three wire centers or whether it will withdraw those three partial wire centers from its ETC petition.

8. A cellular ETC applicant seeking to serve wire centers within a rural telephone company's study area is not required to serve the entirety of the rural telephone company's study areas, particularly if those study areas are noncontiguous geographic territories. Universal Service Order, 12 FCC Rcd. 8882, paragraph 190; Virginia Cellular, paragraph 38.

9. An ETC designation for Easterbrooke consisting of the entire territory of WV RSA 5, as amended to include the entirety of the Walkersville, Thomas and Davis wire centers, does not constitute an attempt by Easterbrooke to cream skim Frontier's service territory and will not permit cream skimming by Easterbrooke, since it is obligated to serve all areas and all customers within its ETC designation and since Frontier has disaggregated its Universal Service support, so that its Universal Service Funds are targeted toward its high-cost wire centers and away from its lower-cost wire centers.

10. Given the decision on an appropriate ETC service area for Easterbrooke, it is reasonable to direct Commission Staff to file the appropriate petition with the Federal Communications Commission pursuant to Section 214(e)(5) of the Communications Act of 1934, as amended, to obtain FCC concurrence in the redefinition of Easterbrooke's ETC service area as encompassing all wire centers located within WV RSA 5, and with the inclusion of the entirety of the Walkersville, Thomas and Davis wire centers, if Easterbrooke makes that choice, or with the complete elimination of the Walkesville, Thomas and Davis wire centers, if Easterbrooke chooses that option.

## ORDER

IT IS, THEREFORE, ORDERED that the petition filed on June 19, 2003, by Easterbrooke Cellular Corporation, doing business as Cellular One, seeking designation as an eligible telecommunications carrier pursuant to 47 U.S.C. §214(e) in the wire centers served by Citizens Telecommunications Company of West Virginia, doing business as Frontier Communications of West Virginia, which are located wholly or partially within WV RSA 5, FCC Market No. 705, be, and hereby is, granted.

IT IS FURTHER ORDERED that Easterbrooke be, and it hereby is, required to notify the Public Service Commission and all parties to this proceeding, within thirty (30) days of the date that this decision becomes final, which of the following two (2) options it has selected:

(1) It will commit to serving the entirety of Frontier's Walkersville, Thomas and Davis wire centers, even though those wire centers are located partially outside of Easterbrooke's FCC licensed service territory; or

(2) It will withdraw the portions of the Walkersville, Thomas and Davis wire centers which are located within WV RSA 5 from its ETC petition.

IT IS FURTHER ORDERED that, within sixty (60) days of the date that this Order becomes final, Commission Staff file the appropriate petition with the Federal Communications Commission pursuant to Section 214(e) of the Communications Act of 1934, as amended, seeking FCC concurrence in the redefinition of Easterbrooke Cellular Corporation's service area for ETC purposes, as described herein, being the entirety of WV RSA 5, plus the portions of the Frontier's Walkersville, Thomas and Davis wire centers which extend beyond the boundaries of WV RSA 5, if Easterbrooke chooses that option, or with the elimination from Easterbrooke's ETC service territory of the portions of the Walkersville, Thomas and Davis wire centers which are located within WV RSA 5, if Easterbrooke chose that option.

IT IS FURTHER ORDERED that, within that same sixty (60) day period, Commission Staff shall provide to the Federal Communications Commission and the Universal Service Administrative Company a certified copy of this Order designating Easterbrooke as an ETC for the specified wire centers and service territory, along with a list of the areas designated to be served by Easterbrooke.

IT IS FURTHER ORDERED that Easterbrooke's ETC designation is conditioned upon its compliance with the Consumer Code for Wireless Service of the Cellular Telecommunications Industry Association.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

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Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

Melissa K. Marland

Melissa K. Marland
Chief Administrative Law Judge

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